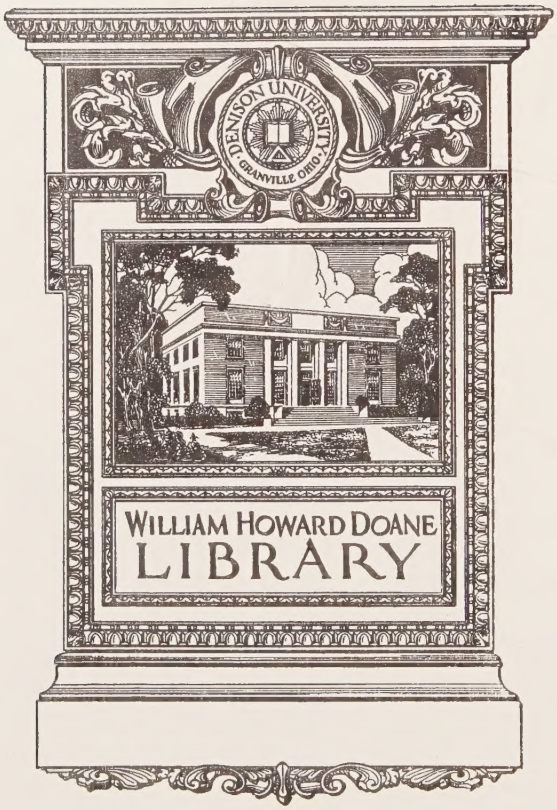
The Lives of the Chief Justices of England



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THE LIVES

OF

THE CHIEF JUSTICES

OF

ENGLAND.

JUDGES IN THEIR ROBES

Temp. ELIZABETH

From MS. Add. 28330 (British Museum)

THE LIVES

OF

THE CHIEF JUSTICES

OF

ENGLAND.

FROM THE NORMAN CONQUEST TILL THE DEATH
OF LORD TENTERDEN.

BY

JOHN, LORD CAMPBELL,

Lord Chief Justice and Lord High Chancellor of England.

New and Revised Edition.

WITH ILLUSTRATIONS AND NUMEROUS ANNOTATIONS.

EDITED BY JAMES COCKCROFT.

VOL. II.

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LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER X.

CONCLUSION OF THE LIFE OF SIR EDWARD COKE.

FROM the middle of the sixteenth to the middle of the eighteenth century, there were few public men of much note who, in the course of their lives, had not been sent as prisoners to the Tower of London. This distinction was now acquired by Sir Edward Coke. He was committed along with Selden,[1]

Dec. 27, 1621. Coke committed to the Tower.

1. John Selden was born at Salvinton, Sussex, Dec. 16, 1584. He was educated first at Chichester, and next at Hart Hall, Oxford, whence he removed to Clifford's Inn, and afterwards to the Inner Temple, where he was called to the bar; but devoted himself chiefly to literary studies, the fruits of which appeared in several learned treatises, particularly his "Titles of Honour," 1614; and another work, "De Diis Syris," on the idolatry of the ancient Syrians. But his next performance brought him into some trouble. This was the "History of Tythes," for which he was called before the Court of High Commission, and compelled to subscribe an acknowledgment of his error. In 1621 he was committed to the custody of the sheriff of London, for giving an opinion derogatory to the regal prerogative; but his confinement lasted only five weeks. In 1623 he was chosen a member of the House of Commons, where he distinguished himself by his opposition to the Court. He was also one of the counsel for Hampden, and on the dissolution of Parliament was sent to the Tower, whence he was removed to the rules of the King's Bench; but, after being balled from time to time, obtained his discharge in 1634. The same year he was employed to defend the sovereignty of England over the Narrow Seas, in opposition to Grotius. This undertaking he accomplished in a work called "Mare Clausum," a copy of which was

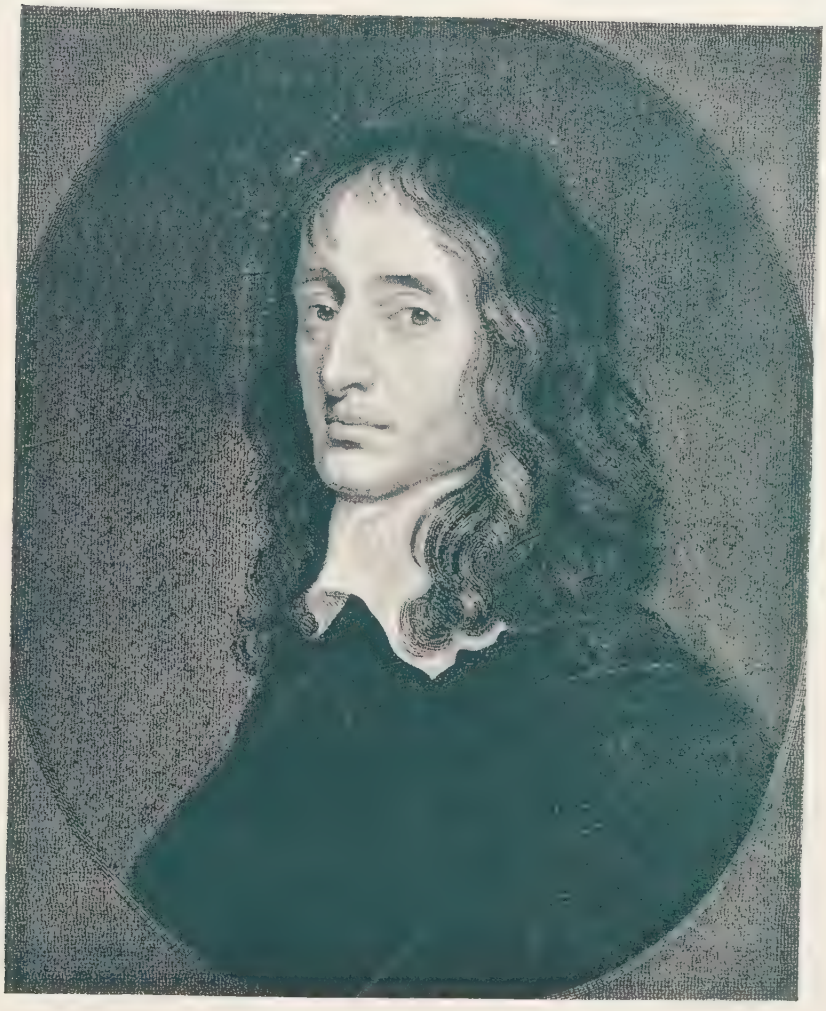
CHAP. X. Prynne,[1] and other leaders of the Opposition. At the same time, orders were given for sealing up the locks and doors of his house in Holborn and of his chambers in the Temple, and for seizing his papers.[2] A general

ordered to be laid up with the public records. In 1640 Selden was elected into Parliament for the University of Oxford ; but in the ensuing troubles he acted a very timid part ; and accepted a seat as a lay-member of the famous Westminster Assembly, where he took a pleasure in perplexing his colleagues by the depth of his oriental learning. In 1643 he was made Keeper of the Records in the Tower. On the execution of the King, Selden retired very much from public life ; and refused to answer the unfortunate monarch's book, called "Eikon Basilike." He died at the house of the Countess of Kent, to whom he was supposed to have been secretly married, Nov. 30, 1654, and was buried in the Temple Church.—*Cooper's Biog. Dict.*

On the occasion of Sir John Eliot's first arrest for words spoken in Parliament, in 1626, the House of Commons, in reply to the Speaker's call to proceed to the orders of the day, shouted "Sit down ! sit down ! No business till we are righted in our liberties !" Sir Dudley Carleton, who held an office at Court, attempted to soothe and at the same time warn the House. . . . The House, however, was in no mood to listen to his caution ; many members called out against the Speaker, "To the bar ! to the bar !" and as the House would go on with no business, the King was reluctantly compelled to release Eliot after eight days' imprisonment, and to wait for another opportunity to punish him as he desired.—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.) 21.

1. William Prynne, born at Swanswick, Somersetshire, 1600. He was educated at Bath, and next at Oriel College, Oxford, whence he removed to Lincoln's Inn. In 1633 he was prosecuted in the Star Chamber for a libel entitled "Histriomastix," when he was sentenced to pay a fine of 5,000*l*, to be expelled the University of Oxford and the Society of Lincoln's Inn, and, after losing his ears in the pillory, to be imprisoned for life. In 1637 Prynne fell again under the censure of the same court for another libel, when he was doomed to lose the remainder of his ears, to have his cheeks branded, to pay another fine of 5,000*l*., and to be perpetually confined in Caernarvon Castle ; but afterwards he was removed to Jersey, where he remained till the meeting of the Long Parliament, when he entered London in triumph. He was soon after elected a member of the House of Commons, where he distinguished himself as the leading manager in the prosecution of Archbishop Laud. Prynne, however, opposed Cromwell as vehemently as he had done the King, for which he was sent to Dunster Castle ; but in 1659 he was restored to his seat. He was instrumental in the recall of Charles II., for which he was appointed Keeper of the Records. In 1661 he fell under the censure of the House for publishing an address to the peers against a bill then in progress respecting corporations. Prynne was a most voluminous writer, but his principal work is a collection of records. Died Oct. 24, 1669.—*Cooper's Biog. Dict.*

2. The "Instructions to the Gentlemen that are to search Sir Edward



JOHN SELDEN.

After Sir Peter Lely.

CHAP. X.

pardon being about to be published, according to usage on the dissolution of parliament, the Council deliberated for some time respecting the mode by which he should be deprived of the benefit of it. The first expedient was to exclude him by name; and then the proposal was adopted of preferring an indictment against him, so that he might come within the exception of such as were under prosecution.

An indictment excludes him from a general pardon.

The ex-Chief Justice being carried to the Tower, and lodged in a low room which had once been a kitchen, he found written on the door of it by a wag —"This room has long wanted a Cook;"[1] and he was soon after complimented in the following distich,—

> "Jus condere cocus potuit, sed condere jura
> Non potuit; potuit condere jura cocus."[2]

A.D. 1622.

Instead of being prosecuted for his speeches in the House of Commons, the true ground of his imprisonment, he was examined before the Privy Council on a stale and groundless charge, that he had concealed some depositions taken against the Earl of Somerset; —he was accused of arrogant speeches when Chief Justice, especially in comparing himself to the prophet Samuel;—and an information was directed to be filed against him in the Star Chamber, respecting the bond for a debt due to the Crown, which he had taken from Sir Christopher Hatton. By way of insult, Lord Arundel was sent to him with a message "that the King had given him permission to consult with eight of the best learned in the law on his case." But he returned thanks for the monarch's attention, and said

The charges in his indictment.

The King's insulting message.

Coke's papers," are still extant. There is an injunction "to take some of his servants or friends in their company, who shall be witnesses that they meddle with nothing that concerns his land or private estate."—*Cotton MS., Titus B.* vii. 204.

1. D'Israeli's James I., p. 125.

2. "The Cookcould make broth, but could not make laws; the Cook could make broths [soups]."

CHAP. X. "he knew himself to be accounted to have as much skill in the law as any man in England; and, therefore, needed no such help, nor feared to be judged by the law: he knew his Majesty might easily find a pretence whereby to take away his head; but against this it mattered not what might be said."[1] His confinement was, at first, so rigorous, that "neither his children or servants could come at him;"[2] but he was soon allowed to send for his law books—ever his chief delight,—and he made considerable progress with his Commentary on Littleton, which now engrossed all his thoughts.

Coke employs himself on "Co. Litt."

After a few months' confinement, the proceedings against him were dropped; and in consequence of the intercession of Prince Charles he was set at liberty.[3] The King, however, finally struck his name out of the list of Privy Councillors, and, declaring his *patriotism* to proceed from disappointed ambition, exclaimed in spleen, "He is the fittest instrument for a tyrant that ever was in England."[4]

He is released on the intercession of the Prince of Wales.

No parliament sitting for two years, Sir Edward Coke, during this interval, remained quiet at his seat in Buckinghamshire; but, there being an intention of calling a new parliament, he was, in the autumn of

A.D. 1623.

1623, put into a commission with several others, requiring them to proceed to Ireland, and make certain inquiries there,—a common mode, in the Stuart reigns, of inflicting banishment on obnoxious politicians. He had formerly complained of this

1. D'Israeli's James I., 126. 2. Roger Coke.

3. The following dialogue is said to have passed between the Prince and the King on this occasion: *P.* "I pray that your Majesty would mercifully consider the case of Sir Edward Coke." *K.* "I know no such man." *P.* "Perhaps your Majesty may remember *Mr. Coke.*" *K.* "I know no such man. By my saul, there is one Captain Coke, the leader of the faction in parliament."—*Sloane MSS. Feb.* 2, 1621–22, *in the British Museum.*

4. Wilson's Life of James I., 191.

abuse of the royal prerogative; but on this occasion he dextrously said, "he was ready to conform to his Majesty's pleasure, and that he hoped in the sister isle to discover and rectify many great abuses." This threat so alarmed the Court that he was allowed to remain at home. Afterwards, when speaking of this practice, he said, "No restraint, be it ever so little, but is imprisonment; and foreign employment is a sort of honorable banishment. I myself was designed to go to Ireland; I was willing to go, and hoped, if I had gone, to have found some Mompessons there."[1]

CHAP. X. Coke defeats an attempt to banish him to Ireland.

The Spanish match, which the nation so much disliked, having been suddenly broken off, and a war with Spain, which was greatly desired in England, now impending, a sudden change arose in the state of parties, and for a time a reconciliation was effected between Buckingham and the leaders of the Puritans. To court them, he even went so far as to encourage schemes for abolishing the order of bishops, and selling the dean and chapter lands in order to defray the expenses of the war.

Change in the state of parties.

Under these circumstances the new parliament was called, and Sir Edward Coke was returned for Coventry, having still remained Recorder of that city, and kept up a friendly intercourse with its inhabitants. At the commencement of the session he appeared as a supporter of the Government, and he declared Buckingham to be the "saviour of his country."[2]

Coke for a short time reconciled to Buckingham. Feb. 1624.

He deserves much credit for carrying the act of parliament, which is still in force, abolishing monopolies, and authorizing the Crown to grant patents securing to inventors for a limited time the

He carries the act abolishing monopolies.

1. Rushworth, i. 523; 2 Parl. Hist. 257.

2. Clarendon says, with great spite, "Sir Edward Coke blasphemously called him Our Saviour."—*Hist.* vol. i. p. 9.

CHAP. X. exclusive exercise of their inventions as a reward for their genius and industry.[1]

May. Coke conducts the impeachment of the Earl of Middlesex.

The most exciting proceeding before this parliament was the impeachment of Lionel Cranfield, Earl of Middlesex, with whom Buckingham had quarrelled, after having made him, from a City merchant, Lord High Treasurer of England. He was charged with bribery and other malpractices in the execution of his office.

Sir Edward Coke, now in his seventy-third year, appeared at the bar of the House of Lords as chief manager for the Commons. After a somewhat prolix preamble respecting impeachments in general, he said,—

"The House of Commons have appointed me to present three enormities to your Lordships, much against my inclination, other members of their House being far more sufficient, as well in regard of my great years, as of other accidents; yet I will do it truly, plainly, and shortly. The first is gross and sordid bribery. Here I crave favor if I should seem tedious in some particulars; for circumstances to things are like shadows to pictures, to set them out in fuller representation." His long opening he at last concluded in these words: "All this I speak by command; I pray your Lordships to weigh it well with solemn consideration, and to give judgment according to the merits."

The Earl's malpractices and his sentence.

The noble defendant had done various things, as head of the Treasury, which would now be considered very scandalous; but he had only imitated his predecessors, and was imitated by his successors. Yet he was found *guilty*, and adjudged "to lose all his offices

1. Stat. 21 James I. c. 3. Hume says, "This bill was conceived in such terms as to render it merely declaratory; and all monopolies were condemned as contrary to law and to the known liberties of the people. It was then supposed that every subject of England had entire power to dispose of his own actions, provided he did no injury to any of his fellow subjects; and that no prerogative of the King, no power of any magistrate, nothing but the authority alone of the laws, could restrain that unlimited freedom."—Vol. vi. p. 143.

which he holds in this kingdom; to be incapable of any office or employment in future; to be imprisoned in the Tower during the King's pleasure; to pay a fine of 50,000*l.*; never to sit in parliament any more; and never to come within the verge of the Court." [1]

May 29, 1624.

At the close of the session, Sir Edward Coke retired to Stoke Pogis, and there occupied himself with his legal studies till he heard of the death of James I., in the spring of the following year.

March 27, 1625. Accession of Chas. I.

He immediately came to his house in Holborn upon the report that there was an intention to reassemble the old parliament, which had expired with the King who called it; but he found that, although Charles had expressed a wish to that effect, a proclamation soon came out for the election of a new parliament.[2] He was again returned for Coventry.

June 22. Coke's moderation.

At the commencement of the session his demeanor was marked by moderation. He entertained good hopes of the new sovereign, and was resolved to give him every chance of a quiet and prosperous reign. Therefore, on the first day of business, when it was expected that he would move, as he had done on former occasions, to appoint a committee for grievances, "he moved that there might be no committee for grievances, because this was the very beginning of the new King's reign, in which there can be no grievances as yet." [3]

His motion for an inquiry into the expenditure of the Crown.

However, he speedily quarrelled with the Court; and when the motion for a supply was made, he moved, by way of amendment, for a committee to

1. Lords' Journals; 1 Parl. Hist. 1411–1478.

2. The early parliaments of Charles I. were short-lived, the first having an existence of two months, and the second of little over four. The third, called together March 17, 1628 (1627, old style), and dissolved March 10, 1629, was a momentous one, for what transpired therein laid the basis of all that followed in the Long Parliament.—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.) 22.

3. 2 Parl. Hist. 5.

CHAP. X. inquire into the expenditure of the Crown; speaking in this wise:

"*Necessitas affectata, invincibilis et improvida.*[1] If necessity comes by improvidence, there is no cause to give. No king can subsist in an honorable estate without three abilities: 1. To be able to maintain himself against sudden invasions. 2. To aid his allies and confederates. 3. To reward his well-deserving servants. But there is a leak in the Government, whereof these are the causes: Frauds in the customs—new invented offices with large fees—old unprofitable offices which the King might justly take away with law, love of his people, and his own honor—the King's household out of order—upstart officers—voluntary annuities or pensions which ought to be stopped till the King is out of debt and able to pay them—costly diet, apparel, buildings, still increase the leakage: the multiplicity of forests and parks, now a great charge to the King, might be drawn into great profit to him."[2]

Causes of the "leak in the Government."

In his reply he said,—

"Two leaks would drown any ship. *Solum et malum concilium* is a bottomless sieve. An officer should not be *cupidus alienæ rei, parcus suæ. Misera servitus est ubi lex vaga aut incognita.*[3] Segrave, Chief Justice, was sentenced for giving sole counsel to the King against the commonwealth. I would give 1,000*l.* out of my own estate, rather than grant any subsidy now."

Aug. 12. Abrupt dissolution of parliament.

The committee was carried, and was proceeding so vigorously in the inquiry into grievances, that the King abruptly dissolved the parliament.

Feb. 1626. Expedient to exclude Coke from the new parliament by making him a Sheriff.

But a supply being soon indispensable, from the exhausted state of the exchequer, a new parliament was to be summoned, and, to make it tractable, the notable expedient was invented of appointing the chief Opposition leaders sheriffs of counties, upon the suppo-

1. "Necessity brought on purposely is indefensible and wasteful."

2. 2 Parl. Hist. 11.

3. "Sole and evil counsel is a bottomless sieve. An officer should not be greedy for another's goods, sparing of his own. Servitude is wretched where the law is uncertain or unknown."

CHARLES I. OPENING PARLIAMENT.

From a Print of the Time in the British Museum.

sition that they would thereby be disqualified to sit in the House of Commons. The ex-Chief Justice Coke, now in his 75th year, was appointed Sheriff of Buckinghamshire. Having in vain petitioned to be excused, on account of his age and the offices which he had heretofore held of much superior dignity, he demurred to taking the oath usually administered to sheriffs, which had remained unchanged since Popish times, and made the sheriff swear to "seek and to suppress all errors and heresies commonly called *Lollories*."[1] "This," he objected, "would compel him to suppress the established religion, since *Lollard* was only another name for *Protestant*." The Judges, being consulted, unanimously resolved that this part of the oath ought to be omitted, "because it is required by statutes which are repealed, having been intended against the religion now professed, then deemed heresy." He likewise excepted to other parts of the

He demurs to taking the oath.

1. The Lollards is the name given to the followers of Wycliffe, though the derivation of it is somewhat doubtful. That Lollardy was one of the chief causes of the Peasant Revolt of 1381 is certain, and it must always be remembered that the Lollards were quite as much a social as a religious party. The first act against the Lollards was passed in 1381, but was merely the work of the Lords and the King. By this statute all Lollards were to be arrested and held in strong prisons till they should justify themselves according to the law and reason of Holy Church. In 1382, and again in 1394, the Lollards addressed a remonstrance to Parliament, in which, among other points, they asserted that no civil lord or bishop had any power so long as he was in mortal sin, and that human laws not founded on the Scriptures ought not to be obeyed. Still there was very little persecution, and it was not till 1401 that the act *De Hæretico Comburendo* was passed, and even after the passing of that statute, and notwithstanding the close alliance between the Lancastrian dynasty and the Church, only two persons were executed for heresy in Henry IV.'s reign, though the Lollards boasted that they numbered 100,000. It is probable that they intended a rising under the leadership of Sir John Oldcastle, at the beginning of Henry V.'s reign, but the vigilance of the Government prevented it, and, for complicity in the projected revolt, some forty persons were put to death. In 1414 an act was passed extending the provisions of the *De Hæretico Comburendo* statute, and several Lollards were executed in the early years of Henry VI.'s reign. By the time of Jack Cade's rebellion (1450) the old Lollard idea seems to have died out.—*Low and Pulling's Dict. of Eng. Hist.*

CHAP. X. oath as unauthorized by any statute; but the Judges said that the residue of the oath, having been administered divers years by the direction of the state, might be continued for the public benefit; and the Privy Council obliged him to take it.[1]

He is obliged to take it.

Feb. 10. He is returned for Norfolk.

Nevertheless, not only without bribe, but without solicitation, he was returned to the House of Commons by his native county of Norfolk.[2] When parliament met, a message from the King was (as we should think, most irregularly and unconstitutionally) brought down by the Chancellor of the Exchequer, "that Sir Edward Coke, being Sheriff of Buckinghamshire, was returned one of the knights of the shire for the county of Norfolk, wherefore he hoped the House would do him that right as to send out a new writ for that county." The ground chiefly relied upon was, that, by a statute then in force, sheriffs were obliged constantly to reside within their bailiwicks.[3] The House referred the matter to the "Committee of Elections and Privileges," who made the unsatisfactory report, "that, after diligent search, they had found many cases *pro* and *con* as to a high sheriff for one county being elected to represent another in parliament." The House ordered them to make further search, and the session came to an end without any decision. Neither he, nor any of the other sheriffs returned to the House, took their seats, but no fresh writs were issued to elect members in their stead; and, on the very day before the dissolution (which, in spite of their exclusion, took place in anger, amidst vain attempts to obtain the redress of grievances), it was "resolved by the House that Sir Edward Coke, standing *de facto* returned a member

Qu. whether he was disqualified by reason of his being a Sheriff?

He does not take his seat.

June 15.

1. Cro. Car. 26.

2. In his own language, "sine aliqua motione aut petitione inde a me præbitis."

3. This is repealed by 3 Geo. III. c. 15.

of that House, should have privilege against a suit in Chancery commenced against him by the Lady Clare."[1] CHAP. X.

Coke serves the office of Sheriff with great distinction.

He performed the duties of Sheriff in a very exemplary manner; and we are told that, when the assizes came round, he rode out to meet the Judges at the head of a grand cavalcade. He likewise stood behind them very worshipfully, with a white wand in his hand. Whether they consulted him, either publicly or privately, on any knotty points of law which arose before them, we are not informed; but, at a pinch, he must have been most serviceable, although he used to say "If I am asked a question of common law, I should be ashamed if I could not immediately answer it; but if I am asked a question of statute law, I should be ashamed to answer it without referring to the statute book."

Arbitrary measures of the Government.

Charles, for a time, resorted to the most outrageous measures of internal government, as if parliaments were never to meet again. He raised money by forced loans and benevolences; he arrogated to himself the power of committing to prison, without specifying any offence in the warrant of commitment; he induced the Judges to decide that they had no power to examine such commitments, or to admit the prisoners to bail; preparatory to the pecuniary imposition of Ship-money, he required the different seaports to furnish a certain number of ships for his service at their own expense; and he billeted soldiers on those who refused his unlawful demands to live at free quarters. But, having been engaged in a war with France, through the wanton caprice of Buckingham, it became

1. 2 Parl. Hist. 44–198. The law is now settled that although a sheriff cannot represent his own county, nor any place within it for which he makes out the precept, he may represent any other county, and even a town within his own county which happens to be a county of itself.

CHAP. X. A.D. 1628.

indispensably necessary, in the beginning of the year 1628, once more to summon the great council of the nation.

Coke member for Buckinghamshire in a new parliament.

The attempt was not renewed to disqualify Sir Edward Coke, as a parliament man, by any office; and such was his popularity, that he was returned by two counties—Suffolk and Buckinghamshire. He elected to serve for the latter, in which he had fixed his residence, and in which he was now regarded with veneration almost amounting to idolatry.

March 17. The King tries to intimidate the parliament.

When the new parliament assembled, the King attempted to daunt the members who he thought might be troublesome, by saying in his opening speech,—

"If you shall not do your duties in contributing to the necessities of the state, I must, in discharge of my conscience, use those other means which God hath put into my hands, in order to save that which the follies of some particular men may otherwise put in danger: take not this for a threatening, for I scorn to threaten any but my equals; but as an admonition from him who, by nature and duty, has most care of your preservation and prosperity."[1]

This was, indeed, the grand crisis of the English constitution. Had our distinguished patriots then quailed, parliaments would thenceforth have been merely the subject of antiquarian research, or perhaps occasionally summoned to register the edicts of the Crown. But, the House of Commons having begun the session with taking the sacrament and holding a solemn fast, on the very first day devoted to public business Sir Edward Coke sounded the charge:

Coke's defence of public liberty.

"*Dum tempus habemus bonum operemur.*[2] I am absolutely for giving supply to his Majesty; yet with some caution. To tell you of foreign dangers and inbred evils, I will not do it,

1. Rushworth, i. 477.
2. "While we have time let us do good."

The state is inclining to a consumption, yet not incurable; I fear not foreign enemies; God send us peace at home. For this disease I will propound remedies: I will seek nothing out of my own head, but from my heart, and out of acts of parliament. I am not able to fly at all grievances, but only at loans. Let us not flatter ourselves. Who will give subsidies, if the King may impose what he will? and if, after parliament, the King may enhance what he pleaseth? I know the King will not do it. I know he is a religious King, free from personal vices; but he deals with other men's hands, and sees with other men's eyes. Will any give a subsidy, if they are to be taxed after parliament at pleasure? The King cannot lawfully tax any by way of loans. I differ from them who would have this of loans go amongst grievances; for I would have it go alone. I'll begin with a noble record; it cheers me to think of it,—26 Edw. III. It is worthy to be written in letters of gold. Loans against the will of the subject are against reason, and the franchises of the land; and they desire restitution. What a word is that *franchise!* The lord may tax his villein high or low; but it is against the franchises of the land for freemen to be taxed but by their consent in parliament. In *Magna Charta* it is provided that *Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento suo, etc., nisi per legale judicium parium suorum, vel per legem terræ.*" [1]

CHAP. X.

His words against forced loans.

The first grievance specifically brought before the House was the decision of the Judges respecting commitments by the King and Council without naming any cause:

Sir Edward Coke: "This draught of the judgment will sting us, *quia nulla causa fuit ostentata*,[2]—'being committed by the command of the King, therefore he must not be bailed.' What is this but to declare upon record, that any subject committed by such absolute command may be detained in prison for ever? What doth this tend to but the utter subversion of the choice, liberty, and right belonging to every free-born sub-

His speech on commitments without cause.

1. 2 Parl. Hist. 237. "No freeman shall be taken, or imprisoned, or seized from his free dwelling, etc., except by the legal judgment of their equals, or by the law of the land."

2. "Because no reason has been shown."

CHAP. X. ject in this kingdom? A parliament brings judges, officers, and all men into good order."[1]

The foundation of the Habeas Corpus Act.

He carried resolutions which, half a century after, were made the foundation of the *Habeas Corpus* Act:

I. "That no freeman ought to be committed or detained in prison, or otherwise restrained by command of the King or the Privy Council or any other, unless some cause of the commitment, detainer, or restraint be expressed, for which by law he ought to be committed, detained, or restrained.

II. "That the writ of Habeas Corpus cannot be denied, but ought to be granted to every man that is committed or detained in prison or otherwise restrained by the command of the King, the Privy Council, or any other."[2]

Coke's patriotic regard for the glory of England.

While he attended to grievances at home, he was by no means indifferent to the honor and greatness of the country.

Thus he spoke in the debate on granting a supply to enable the King to repel foreign aggression:

"When poor England stood alone, and had not the access of another kingdom, and yet had more and as potent enemies as now, yet the King of England prevailed.[3] In the parliament roll 4 Edw. III., the King and Parliament gave God thanks for his victory against the Kings of Scotland and France; he had them both in Windsor Castle[4] as prisoners.

1. 2 Parl. Hist. 246. Notwithstanding this violent invective against the doctrine that persons committed by the King could not be liberated by the Judges, it would appear that he himself, when on the bench, had sanctioned it. The Lord Chief Justice Hyde, being questioned in the House of Lords for the late decision of the Court of King's Bench on this subject, said, "If we have erred, '*erravimus cum Patribus*,' and they can show no precedent but that our predecessors have done as we have done—sometimes bailing, sometimes remitting, sometimes discharging. Yet we do never bail any committed by the King, or his Council, till his pleasure be first known; *and thus did the Lord Chief Justice Coke in Raynard's case.*"—2 *Parl. Hist.* 292.

2. 2 Parl. Hist. 259.

3. "Poor England! thou art a devoted deer,
Beset with every ill but that of fear."—*Cowper.*

4. Windsor was the residence of the Saxon kings before the Norman Conquest, but the present castle was founded by William the Conqueror, and almost rebuilt by Edward III., under the direction of William of

In 3 Rich. II. the King was environed with Flemings, Scots, and French, and the King of England prevailed. In 13 Rich. II. the King was environed with Spaniards, Scots, and French, and the King of England prevailed. In 17 Rich. II. wars were in Ireland and Scotland, and yet the King of England prevailed: thanks were given to God; and I hope I shall live to give God thanks for our King's victories. But to this end the King must be assisted by good counsel. In 7 Hen. IV. one or two great men about the King mewed him up, that he took no other advice but from them; whereupon the Chancellor took this text for the theme of his speech in parliament, 'Multorum consilia requiruntur in magnis; in bello qui maxime timent sunt in maximis periculis.' Let us give, and not be afraid of our enemies; let us supply bountifully, cheerfully, and speedily. It shall never be said we deny all supply; I think myself bound where there is *commune periculum*, there must be *commune auxilium*."[1] CHAP. X.

He favors a supply.

Still he was determined that, before the supply was actually given, there should be an effectual redress of grievances. He therefore framed the famous PETITION OF RIGHT. This second MAGNA CHARTA enumerated the abuses of prerogative from which the nation had lately suffered,—levying forced loans and benevolences —unlawful imprisonments in the name of the King and the Privy Council—billeting soldiers to live at free quarters—with various other enormities,—and, after declaring them all to be contrary to former statutes and the laws and customs of the realm, assumed the form of an act of the Legislature, and, in the most express and stringent terms, protected the people in all time to come from similar oppressions. There were various

He brings forward the Petition of Right.

Wykeham, and again in 1824–28, under that of Sir Jeffrey Wyatville. In the keep or round tower of the castle, sometimes used for royal prisoners, James I. of Scotland was confined.—*Appl. Encyc.*, vol. xvi. p. 664.

1. ["Where there is common danger, there must be assistance in common."]—2 Parl. Hist. 255. It is curious to observe that Coke always dates historical events by the year of a king's reign; and I suspect that his knowledge of history was chiefly drawn from poring over the Statute Book and the Rolls of Parliament.

CHAP. X. conferences upon the subject between the two Houses, which were chiefly conducted on the part of the Commons by Sir Edward Coke. What seems very strange to us,—the Attorney General and other Crown lawyers were allowed to argue against the Petition at the bar, as counsel for his Majesty, and to combat its positions and enactments; but they were completely refuted by the ex-Chief Justice, who not only had reason on his side, but possessed much more constitutional law and vigor of intellect than any of them, or all of them put together. The King, afraid of the impression made upon the Lords, sent a message to both Houses, expressing his willingness to concede them a bill in confirmation of King John's MAGNA CHARTA, without additions, paraphrases, or explanations; assuring them that no future occasion of complaint should arise. Mr. Secretary Cooke, with soft and honeyed expressions, moved that the House should be content with the King's assurances;[1] and many members, persuaded by

He refutes the arguments against it.

1. On the 1st of May, 1628, Secretary Cooke delivered a message, asking whether they would rely on the *King's word*. This question was followed by a long silence. Several speeches are reported in the letters of the times. Sir Nathaniel Rich observed that, "confident as he was of the royal word, what did any indefinite word ascertain?" Pym said, "We have his Majesty's coronation oath to maintain the laws of England; what need we, then, take his word?" He proposed to move, "Whether we should take the King's word or no." This was resisted by Secretary Cooke: "What would they say in foreign parts, if the people of England would not trust their King?" He desired the House to call Pym to order; on which Pym replied, "Truly, Mr. Speaker, I am just of the same opinion I was—viz., that the King's oath was as powerful as his word." Sir John Eliot moved that it be put to the question, "because they that would have it do urge us to that point." Sir Edward Coke on this occasion (May 6) made a memorable speech. "We sit now in Parliament, and therefore must take his Majesty's word no otherwise than in a parliamentary way; that is, of a matter agreed on by both Houses—his Majesty sitting on his throne in his robes, with his crown on his head and sceptre in his hand, and in full Parliament; and his royal assent being entered upon record, *in perpetuam rei memoriam*. This was the royal word of a King in Parliament, and not a word delivered in a chamber, and out of the mouth of a secretary, at the second hand. Therefore I motion that the House of Commons, *more majorum*, should draw a petition *de droict*

his rhetoric, were intimating their assent to waive the Petition: CHAP. X.

He estimates the value of the King's assurances.

Sir Edward Coke: "Was it ever known that general words were a satisfaction to particular grievances? Was ever a verbal declaration of the King *verbum Regis?*[1] Where grievances be, the parliament is to redress them. Did ever parliament rely on messages? The King's answer is very gracious, but we have to look to the law of the realm. I put no diffidence in his Majesty, but the King must speak by record; and in particulars, not in generals. Did you ever know the King's message come into a bill of subsidies? All succeeding kings will say, 'Ye must trust me as well as ye did my predecessor, and give faith to my messages.' But messages of love have no lasting endurance in parliament. Let us put up a PETITION OF RIGHT. Not that I distrust the King, but that I cannot take his trust save in a parliamentary way."[2]

Proviso introduced in the House of Lords to save the "sovereign power of the Crown."

The Commons resolved that they would proceed; and the Lords passed the bill, but were prevailed upon by the courtiers to add a proviso, which would have completely nullified its operation, "that nothing therein contained should be construed to intrench on the sovereign power of the Crown." The bill coming back to the House of Commons for their concurrence in the amendment, Sir Edward Coke said,—

On the recommendation of Coke this is rejected by the Commons.

"This is *magnum in parvo.* It is a matter of great weight, and, to speak plainly, it will overthrow all our PETITION; it trenches on all parts of it; it flies at loans, at imprisonment, and at billeting of soldiers. This turns all about again. Look into all the petitions of former times; the assenting answer to them never contained a saving of the King's sovereignty. I know that prerogative is part of the law, but 'sovereign power' is no parliamentary word. In my opinion,

to his Majesty; which, being confirmed by both Houses and assented unto by his Majesty, will be as firm an act as any. Not that I distrust the King, but that I cannot take his trust but in a parliamentary way." In this speech of Sir Edward Coke we find the first mention, in the legal style, of the ever-memorable "Petition of Right," which two days after was finished.—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.), p. 66.

1. "The word of the King."

2. 2 Parl. Hist. 348; Rushworth, i. 558.

CHAP. X. it weakens Magna Charta and all the statutes whereon we rely for the declaration of our liberties; for they are absolute without any saving of 'sovereign power.' Should we now add it, we shall weaken the foundation of law, and then the building must fall. If we grant this, by implication we give a 'sovereign power' above all laws. 'Power' in law is taken for *a power with force;* the sheriff shall take the *power of the county.* What it means here, God only knows. It is repugnant to our PETITION. This is a PETITION OF RIGHT granted on acts of parliament, and the laws which we were born to enjoy. Our ancestors could never endure a *salvo jure suo*[1] from kings—no more than our kings of old could endure from churchmen *salvo honore Dei et Ecclesiæ.*[2] We must not admit it, and to qualify it is impossible. Let us hold our privileges according to law. That power which is above the law, is not fit for the King to ask, or the people to yield. Sooner would I have the prerogative abused, and myself to lie under it; for though I should suffer, a time would come for the deliverance of the country."[3]

The Lords concur.

The amendment was rejected by the Commons; and, after several conferences, the Lords agreed "not to insist upon it." Thereupon the Commons sent a message to the Lords by Sir Edward Coke,—

"To render thanks to their Lordships for their noble and happy concurrence with them all this parliament; to acknowledge that their Lordships had not only dealt nobly with them in words, but also in deeds; that this Petition contained the true liberties of the subjects of England, and their Lordships concurring with the Commons had crowned the work; that this parliament might be justly styled 'PARLIAMENTUM BENEDICTUM;' and to ask the Lords to join in beseeching his Majesty, for the comfort of his loving subjects, to give a gracious answer."[4]

The King's attempt to return an evasive answer.

Buckingham would not venture to advise a direct *veto* by the words "*Le Roy s'avisera,*"[5] but framed the following evasive and fraudulent answer:

1. "His own right being safe."
2. "The honor of God and of the Church being safe."
3. 2 Parl. Hist. 357.
4. 2 Parl. Hist. 372.
5. The last time on which the power to reject bills was exercised by the

GEORGE VILLIERS, DUKE OF BUCKINGHAM.

After Van der Werf.

CHAP. X.

"The King willeth that right be done according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience as well obliged as of his own prerogative."[1]

The Commons returned to their chamber in a rage; and Speaker Finch,[2] the devoted tool of the Court, seeing their excited condition, exclaimed, "I am commanded to interrupt any member who shall asperse a minister of state." Nevertheless, Sir Edward Coke rose, but, according to Rushworth, "overcome with passion, seeing the desolation likely to ensue, he was forced to sit, when he began to speak, through the abundance of tears." The veteran statesman, having in some measure recovered his self-command, thus proceeded:

Coke's denunciation of the Duke of Buckingham.

"I now see that God has not accepted of our humble and moderate carriages and fair proceedings; and the rather, because I fear they deal not sincerely with the King and with the country in making a free representation of all these miseries. I repent myself, since things are come to this pass, that I did not sooner declare the whole truth; and, not knowing whether I shall ever speak in this House again, I will do

sovereign was in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.), p. 18.

1. 2 Parl. Hist. 377.

2. John, Lord Finch (*b.* 1584, *d.* 1660), was the son of Sir Henry Finch, an eminent lawyer. He was a member of Charles I.'s first two parliaments, and was chosen Speaker of the third, which met in 1628. He speedily showed himself a decided partisan of the King, and, in 1629, he refused to read a remonstrance against tonnage and poundage after the King's message for the adjournment of Parliament had been delivered. A tumult occurred, during which the Speaker was held down in his chair, and Holles read the protestation to the House. In 1637 Finch was made Chief Justice of the Common Pleas, in which capacity he delivered judgment against Hampden in the case of Ship-money. In 1640 he was made Lord Keeper, but, fearing the vengeance of the Long Parliament, he fled from England, at the end of the same year, to Holland, where he remained till 1660, when he returned to England, and took part in the trials of the Regicides.—*Low and Pulling's Dict. of Eng. Hist.*

CHAP. X. it now freely. We have dealt with that duty and moderation that never was the like after such a violation of the liberties of the subject. What shall we do? Let us palliate no longer; if we do, God will not prosper us. I think the Duke of Bucks is the cause of all our miseries, and, till the King be informed thereof, we shall never go out with honor or sit with honor here. That man is the grievance of grievances. Let us set down the causes of all our disasters, and they will all reflect upon him. It is not the King, but the Duke."—Cries, "'Tis he!" "'Tis he!"

"The grievance of grievances."

Rushworth adds, "This was entertained and answered with a full acclamation of the House,—as when one good hound recovers the scent, the rest come in with full cry."[1]

Parliament pleads for a clear and satisfactory answer.

The Lords and Commons agreed upon a joint address to the King, which was delivered to him sitting on the throne, saying that, "with unanimous consent, they did become humble suitors unto his Majesty, that he would be pleased to give a clear and satisfactory answer to their PETITION OF RIGHT." The King said that "he intended by his former answer to give them full satisfaction, but that, to avoid all ambiguous interpretations, he was willing to pleasure them as well in words as in substance."

The Petition being now read,—by his desire the clerk, in the usual form in which the royal assent is given to bills, said, "Soit droit fait comme il est desiré;" and the PETITION OF RIGHT became a statute of the realm.[2] There is an entry in the Journals stating, "When these words were spoken, the Commons gave a great and joyful applause, and his Majesty rose and departed." In the evening there were bonfires all over London, and the whole nation was thrown into a transport of joy.[3]

1. Rushworth, i. 609; Whitelocke, p. 10; 2 Parl. Hist. 410.
2. 3 Charles I. ch. i.
3. On the 6th of June, 1628, the King moderated the effect of his mes-

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The Petition of Right receives the royal assent in due form.

The PETITION OF RIGHT might have led to a quiet and prosperous reign; but, being recklessly violated, before many years elapsed a civil war raged in the kingdom, and the dethroned King lost his life on the scaffold.

The Commons performed their part of the engagement, for they immediately read a third time, and passed, a bill to grant five subsidies to the King; and having ordered Sir Edward Coke to carry it to the Lords, almost the whole House accompanied him thither, in token of their gratitude and good will to his Majesty.[1]

sage of the previous day, by sending another, in which he expressed a hope that "all Christendom might take notice of a sweet parting between him and his people." The House of Commons, however, was determined that the Petition of Right should receive a definite reply, and sent a message to the Lords that they would join in a humble request to the King "that a clear and satisfactory answer be given by his Majesty in full Parliament to the Petition." This being agreed to, the King came to the House of Lords on the 7th, and, the Commons being summoned, Charles made a short speech, in which he said: "To avoid all ambiguous interpretations, and to show you that there is no doubleness in my meaning, I am willing to please you in words as well as in substance. Read your Petition, and you shall have an answer I am sure will please you." The Petition having been read, the formal answer was returned, "Soit droit fait comme il est desiré," and the King again spoke. "This," said he, "I am sure is full, yet no more than I granted you in my first answer, for the meaning of that was to confirm all your liberties, knowing, according to your own protestations, that you neither mean *nor can* hurt my prerogative. And I assure you my maxim is, that the people's liberties strengthen the King's prerogative, and the King's prerogative is to defend the people's liberties. You see now how ready I have shown myself to satisfy your demands, so that I have done my part; wherefore, if this Parliament hath not a happy conclusion, the sin is yours; I am free of it." An entry on the Lords' Journals records: "At the end of the King's first speech, at the answer to the Petition, and on the conclusion of the whole, the Commons gave a great and joyful applause."—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.), p. 25.

Bill for supply passes which Coke carries up to the House of Lords.

1. Subsidies having been voted to the King on the 4th of April, 1628, Mr. Secretary Cooke three days afterwards reported to the House the King's acceptance, and how his Majesty was pleased to ask, By how many voices they were gained? "I said, but *by one.* His Majesty asked how many were against him? I said, none; for they were voted by one voice, and one general consent. His Majesty was much affected therewith, and called the Lords in council, and there I gave them account what

CHAP. X. This good understanding was momentary, for the King still insisted that he had a right to levy tonnage [1] and poundage [2] by his own authority; and when the House of Commons was preparing a remonstrance against this illegal proceeding, he suddenly put an end to the session by a prorogation, saying, "The profession of both Houses in the time of hammering your PETITION was, that you nowise trenched upon my prerogative. Therefore it must needs be that I have thereby granted you no new power, but only confirmed the ancient liberties of my subjects." [3] He then

June 26. Sudden prorogation.

had passed. Besides, it gave his Majesty no small content that, although five subsidies be inferior to his wants, yet it is the greatest gift that ever was given in Parliament; and now he sees with this he shall have the affections of his people, which will be greater to him than all value. He said he liked parliaments at the first, but since (he knew not how) he was grown to a distaste of them; but was now where he was before, he loves them, and shall rejoice to meet with his people often."—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.) 23.

1. A duty or impost on goods brought or carried in vessels.

2. Poundage was a duty imposed *ad valorem*, at the rate of 12*d.* in the pound, on all other merchandise whatsoever.—*Blackst. Com.*, vol. i. c. 8.

3. The dissolution of 1629 put an end to parliamentary proceedings for more than eleven years—until the calling of a Parliament in April, 1640. On the 10th of March, 1629, his Majesty was seated on the throne, the Lords being present in their robes, "and divers of the Commons (says Rushworth) below the bar, but not their Speaker, neither were they called," when the King spoke as follows: "My Lords, I never came here upon so unpleasant an occasion, it being the dissolution of a Parliament; therefore men may have some cause to wonder why I should not rather choose to do this by commission, it being a general maxim of kings to leave harsh commands to their ministers, themselves only executing pleasing things. Yet, considering that justice as well consists in reward and praise of virtue as punishing of vice, I thought it necessary to come here to-day, and to declare to you and all the world that it was merely the undutiful and seditious carriage in the Lower House that hath made the dissolution of this Parliament; and you, my Lords, are so far from being any causes of it, that I take as much comfort in your dutiful demeanor as I am justly distasted with their proceedings. Yet, to avoid their mistakings, let me tell you that it is so far from me to adjudge all the House alike guilty, that I know that there are many there as dutiful subjects as any in the world, it being but some few vipers among them that did cast this mist of undutifulness over most of their eyes. Yet, to say truth, there was a good number there that could not be infected with this contagion, insomuch that some did express their duties in speaking, which was the general fault of the House the last day. To conclude, as those vipers must look

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resorted to the dishonorable expedient of circulating copies of the PETITION OF RIGHT, with the first answer which he had given to it, and he insisted that his prerogatives were in all respects the same as before this parliament was called, so that the right to levy tonnage and poundage was inalienably vested in the Crown.

The King's dishonorable expedient.

Sir Edward Coke, although deprived of office, and still excluded from the Privy Council, may be considered as having reached the zenith of his fame. Not only was he admired as a statesman and a patriot, but he now secured to himself the station which he has ever since continued to occupy, as the greatest expounder of the common law of England, by giving to the world his "Commentary on Littleton,"[1] which had been his laborious occupation for many years. Although the first edition abounded with errors of the press, the value of the book was at once recognized, and he received testimonies in its praise which should have made him rejoice that he had not been wearing away his life in the dull discharge of judicial duties.

Co. Litt.

Jan. 21, 1629.

Parliament again met in the beginning of the following year, but Sir Edward Coke's name is not mentioned in the proceedings of the short session which was then

Coke absent from the short stormy session of 1629.

for their reward of punishment, so you, my Lords, must justly expect from me that favor and protection that a good king oweth to his loving and faithful nobility." The Lord Keeper was then commanded to announce the Parliament dissolved.—*Jennings' Anecdotal Hist. Brit. Parl.* (Am. Ed.), p. 27.

1. Sir Thomas Littleton, or Lyttleton, was the son of Thomas Westcote, of the county of Devon, by Elizabeth, daughter of Thomas Littleton, of Frankley, in Worcestershire; in compliance with whose wish this son took the maternal name and arms. He studied in the Temple, and was appointed by Henry VI. Judge of the Marshalsea; in 1455 made King's Sergeant and a judge of the assize; in 1466 nominated one of the Justices of the Common Pleas; and in 1475 created Knight of the Bath. Died Aug. 23, 1481. He wrote in Norman French a celebrated treatise on Tenures for the use of his son Richard, who was also a distinguished lawyer. The first edition of it is supposed to have been printed a little after the author's death, in folio, at Rouen. Sir Edward Coke's commentary on this famous work is well known.—*Cooper's Biog. Dict.*

CHAP. X. held, except once, when the Speaker was directed to write to him to request his attendance.[1] No explanation is given of the cause of his absence, and, as he continued at bitter enmity with the Court, he was probably detained in the country by illness. We may conjecture the resentful tone in which he would have exposed the violation of the PETITION OF RIGHT, and the prominent part which he would have taken in the famous scene in the House of Commons immediately before the dissolution,[2] when Speaker Finch was held down in the chair while resolutions were carried asserting the privileges of the House.

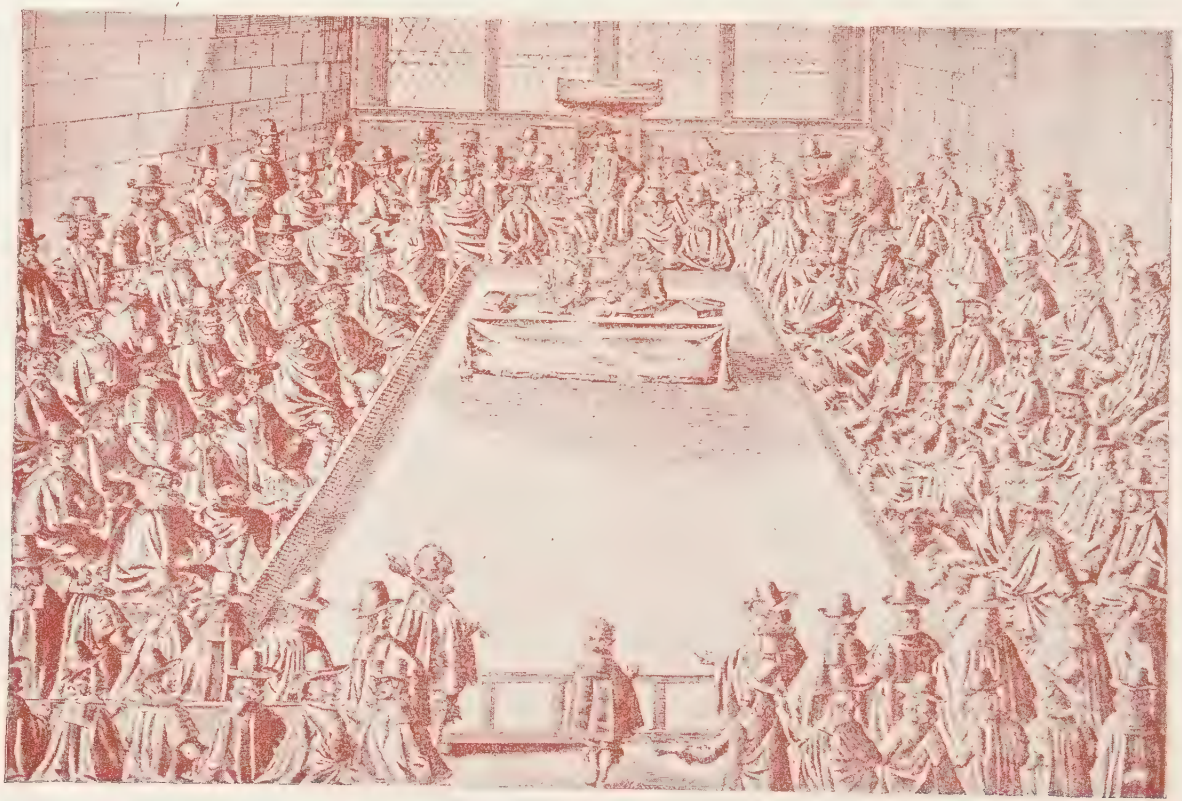
He escapes imprisonment.

By his absence he had the good luck to escape the imprisonment inflicted on Sir John Eliot,[3] Hollis, and

1. Journals, 11th Feb. 1629: "In respect that the term ends to-morrow, and the assizes to follow; and divers members that are lawyers of this House may be gone, it is ordered that none shall go forth of town without the leave of the House. Ordered also that the Speaker's letter shall be sent for Sir Edward Coke."—2 *Parl. Hist.* 463. They wanted his assistance in the debate on the claim of the King to levy tonnage and poundage without the authority of Parliament. The same day Oliver Cromwell made his maiden speech, in which he denounced a sermon delivered at Paul's Cross as "flat popery."

2. On the 2d of March, 1629, "Sir John Finch, the Speaker (being the Queen's solicitor), refusing to do his office or to read some particular writings the House enjoined him, many members thereof fell to reproving him, others to excuse him; and the tumult and discontent of the whole House was so great, as the more grave and judicious thereof began infinitely to fear lest at the last swords should have been drawn, and that forenoon ended in blood." Selden thus addressed the Speaker on this occasion: "Dare not you, Mr. Speaker, put the question when we command you? If you will not put it, we must sit still; thus we shall never be able to do anything: they that come after you may say, they have the King's command not to do it. We sit here by command of the King under the Great Seal, and you are by his Majesty, sitting in his royal chair, before both Houses appointed our Speaker, and now you refuse to perform your office." On the following day, warrants were issued from the Council against Selden and other members, and several were sent to the Tower. Sir John Eliot was kept there till he died. Finch's conduct in the chair was many years afterwards made one of the grounds of his impeachment by the Long Parliament.—*D'Ewes' Autobiography.*

3. The last scene in this patriot's history, before the Tower gates were closed upon him, was in every way a memorable one. He was aware that the King, who had already ordered an adjournment of the Parliament, was



HOUSE OF COMMONS, TIME OF CHARLES I.

From a Print of the Time.

the other popular leaders, who were afterwards convicted in the Court of King's Bench of a misdemeanor, for what they had done as members of the House of Commons. CHAP. X.

He appeared in public no more. Although he survived six years, no other parliament was called till his remains had mouldered into dust. Charles had resolved to reign by prerogative alone, and was long able to trample upon public liberty,—till the day of retribution arrived. He retires from public life.

The first months of Coke's retirement were devoted to the publication of a new edition of his Commentary on Littleton, which was the most accurate and valuable till the *thirteenth*, given to the world in the end of the last century by those very learned lawyers Hargrave and Butler. We have scanty information respecting his occupations, and the incidents which befell him, till the closing scene of his life. He continued to reside constantly at Stoke Pogis. He was never reconciled to Lady Hatton, who, there is reason to fear, grumbled at his longevity. Mr. Garrard, in a A.D. 1629—1634. His occupations. Never reconciled to Lady Hatton.

about to dissolve it, finding it determined not to grant money without the redress of grievances. On the day fixed for the temporary reassembling of the Houses, the 2d of March, 1629, Eliot rose in his place immediately after prayers, to propose an emphatic resolution which he had prepared against tonnage and poundage. The Speaker (Sir John Finch, a tool of the Court party) endeavored to check him, saying it was the King's order that they were to adjourn; but the House insisted upon its right to adjourn itself, and declared it would hear Eliot. "These men," said he—alluding to Buckingham and other evil advisers of Charles—"these men go about to break parliaments lest parliaments should break them." And he brought his speech to a conclusion by saying, "I protest, as I am a gentleman, if my fortune be ever again to meet in this honorable assembly, *where I now leave I will begin again.*" He then offered his resolution to the Speaker, who positively refused to read it, and was about to quit the chair, when he was thrust back by Denzil Hollis and others, and Hollis read the resolution, which was carried by acclamation. The doors, having been previously locked, were now thrown open, and the members, hurrying forth, found a King's guard had just been sent to clear the House by force. Sir Simonds D'Ewes notes this as "the most gloomy, sad, and dismal day for England that had happened for five hundred years."—*Jennings' Anecdotal Hist Brit. Parl.* (Am. Ed.) 66.

CHAP. X. letter, written in the year 1633, to Lord Deputy Strafford, says: "Sir Edward Coke was said to be dead, all one morning in Westminster Hall, this term, insomuch that his wife got her brother, the Lord Wimbledon, to post with her to Stoke, to get possession of that place; but beyond Colebrook they met with one of his physicians coming from him, who told her of his much amendment, which made them also return to London; some distemper he had fallen into for want of sleep, but is now well again."[1]

His dislike to physic.

Till a severe accident which he met with, he had constantly refused "all dealings with doctors;" and "he was wont to give God solemn thanks that he never gave his body to physic, nor his heart to cruelty, nor his hand to corruption."[2] When turned of eighty, and his strength declining rapidly, a vigorous attempt was made to induce him to take medical advice; of this we have a lively account in a letter from Mr. Mead to Sir Martin Stuteville:

Attempt of his friends to give him the benefit of medical advice.

"Sir Edward Coke being now very infirm in body, a friend of his sent him two or three doctors to regulate his health, whom he told that he had never taken physic since he was born, and would not now begin; and that he had now upon him a disease which all the drugs of Asia, the gold of Africa, nor all the doctors of Europe could cure—old age. He therefore both thanked them and his friend that sent them, and dismissed them nobly with a reward of twenty pieces to each man."[3]

He meets with an accident.

Of his accident, which in the first instance produced no serious effects, there is the following account entered by him in his diary, in the same firm and clear hand which he wrote at thirty:

"The 3d of May, 1632, riding in the morning in Stoke, between eight and nine o'clock to take the air, my horse

1. Strafford's Letters and Dispatches, i. 265.
2. Lloyd's State Worthies, ii. 112.
3. Harleian MS. 390, fol. 534: Ellis Papers, iii. 263.

under me had a strange stumble backwards and fell upon me (being above eighty years old), where my head lighted near to sharp stubbles, and the heavy horse upon me. And yet by the providence of Almighty God, though I was in the greatest danger, yet I had not the least hurt, nay, no hurt at all. For Almighty God saith by his prophet David, 'the angel of the Lord tarrieth round about them that fear him, and delivereth them,' *et nomen Domini benedictum*,[1] for it was his work." CHAP. X.

But he had received some internal injury by his fall, and from this time he was almost constantly confined to the house. His only domestic solace was the company of his daughter, Lady Parbeck, whom he had forgiven—probably from a consciousness that her errors might be ascribed to his utter disregard of her inclinations when he concerted her marriage. She continued piously to watch over him till his death.[2] His daughter is his solace.

His law books were still his unceasing delight; and he now wrote his SECOND, THIRD, and FOURTH INSTITUTES, which, though very inferior to the FIRST, are wonderful monuments of his learning and industry. The "Institutes."

On one occasion, without his privity, his name was introduced in a criminal prosecution. A person of the name of Jeffes, who seems to have been insane, fixed a libel on the great gate of Westminster Hall, asserting the judgment of Sir Edward Coke, when Chief Justice of the King's Bench, in the case of Magdalen College,[3] to be *treason*, calling him *traitor*, and *perjured Judge*, Prosecution for a libel upon him.

1. "And blessed be the name of God."

2. Extract of letter from Mr. Gerrard to Lord Deputy Strafford, dated 17th of March, 1636: "Here is a new business revived; your Lordship hath heard of a strong friendship heretofore betwixt Sir Robert Howard and the Lady Parbeck, for which she was called into the High Commission, and there sentenced to stand in a white sheet in the Savoy Church, which she avoided then by flight, and hath not been much looked after since, having lived much out of town, and constantly these last two years with her father at Stoke." He afterwards goes on to give an account of her imprisonment in the Gatehouse, and her escape in the disguise of a page.

3. 11 Rep. 66.

CHAP. X. and scandalizing all the profession of the law. The Government thought that this was an insult to the administration of justice not to be passed over, and directed that the offender should be indicted in the Court of King's Bench. Had he been brought before the Star Chamber he could hardly have been more harshly dealt with, for he was sentenced to stand twice in the pillory, to be carried round all the courts in Westminster Hall with a descriptive paper on his breast, to make submission to every court there, to pay a fine of 1,000*l.*, and to find sureties for his good behavior during the remainder of his life.[1]

His treatment by the Government.

This proceeding was not prompted by any kindness for the ex-Chief Justice; on the contrary, he was looked upon with constant suspicion, and the Government was eagerly disposed to make him the subject of prosecution. Buckingham had fallen by the hand of an assassin, but his arbitrary system of government was strenuously carried on by Laud and those who had succeeded to power; taxes were levied without authority of Parliament; illegal proclamations were issued, to be enforced in the Star Chamber; and Noy's device of Ship-money was almost mature. Sir Edward Coke having then resided in the same county with Hampden, and at no great distance from him,—it is conjectured, without any positive evidence, that they consulted together as to the manner in which the law and the constitution might be vindicated. So much is certain,—that, from secret information which the Government had obtained, Sir Francis Windebank, the Secretary of State, by order of the King and Council, came to Stoke on the 1st of September, 1634, attended by several messengers, to search for seditious papers, and, if any were found, to arrest the author.

Coke supposed to have advised Hampden to resist Ship-money.

A.D. 1634.

On their arrival they found Sir Edward Coke on

1. Cro. Car. 175.

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his death-bed. They professed that they would, under these circumstances, offer him no personal annoyance; but they insisted on searching every room in the house except that in which he lay, and they carried away all the papers, of whatever description, which they could lay their hands upon. Among these were the original MS. from which he had printed the Commentary on Littleton; the MS. of his Second, Third, and Fourth Institutes, his last will, and many other papers in his handwriting.[1]

His papers seized by the Secretary of State when he was on his death-bed.

It is believed that Sir Edward Coke remained ignorant of this outrage, and that his dying moments were undisturbed. He had been gradually sinking for some time, and on the 3d of September, 1634, he expired, in the eighty-third year of his age; enjoying to the last the full possession of his mental powers, and devoutly ejaculating, "Thy kingdom come! Thy will be done!"

His death.

His last words.

His remains were deposited in the family burying-place at Titleshall, in Norfolk, where a most magnificent marble monument has been erected to his memory, with a very long inscription, of which the following will probably be considered a sufficient specimen:

His funeral.

1. There is now extant, in the library at Lambeth, the original inventory of these papers, entitled "A catalogue of Sir Edward Coke's papers, that by warrant from the Council were brought to Whitehall, whereon his Majesty's pleasure is to be known, which of them shall remain there." It begins, "A wanscott box, of his arms, accounts and revenues." The house in Holborn had been searched and rifled at the same time, for there is in the library at Lambeth another inventory, entitled "A note of such things as were found in a trunk taken from Pepys, Sir Edward Coke's servant, at London, brought to Bagshot by his Majesty's commandment, and then broken up by his Majesty, 9th of September, 1634." Among the items is "One paper of poetry to his children." This may have been the poetical version of his Reports, of which I will afterwards give a specimen. The will was destroyed or lost, to the great prejudice of the family. The law MSS., as we shall see, were returned by order of the Long Parliament.

CHAP. X.
His epitaph.

"Quique dum vixit, Bibliotheca viva,
Mortuus dici meruit Bibliothecæ parens.
Duodecem Liberorum, tredecim librorum Pater." [1]

For the benefit of the unlearned, there is another inscription in the vulgar tongue; which, after pompously describing his life and death, thus edifyingly concludes:

"Learne READER to live so, that thou mayst so die."

His ignorance of science and his contempt for literature.

In drawing his character I can present nothing to captivate or to amuse. Although he had received an academical education, his mind was wholly unimbued with literature or science; and he considered that a wise man could not reasonably devote himself to any thing except law, politics, and industrious money-making. He values the father of English poetry only in as far as the "Canon's Yeoman's Tale" illustrates the statute 5 Hen. IV. c. 4, against Alchemy, or the craft of multiplication of metals; and he classes the worshipper of the Muses with the most worthless and foolish of mankind: "The fatal end of these five is beggary,—the alchemist, the monopotext, the concealer, the informer, and the poetaster.

"Sæpe pater dixit, studium quid inutile tentas?
Mæonides nullas ipse reliquit opes." [2]

He shunned the society of Shakspeare and Ben Jonson, as of *vagrants* who ought to be set in the stocks, or whipped from tithing to tithing. The Bankside Company having, one summer, opened a theatre at Norwich, while he was Recorder of that city, in his next charge to the grand jury he thus launched out against them:

"I will request that you carefully put in execution the

1. "Who while he lived was a living dictionary; when dead, deserved to be called the father of the dictionary. He was the father of twelve children and of thirteen books."

2. ["His father often said, 'Why do you devote yourself to useless study? Mæonides himself left no works.'"]—3 Institute, 74.

statute against *vagrants;* since the making whereof, I have found fewer thieves, and the gaol less pestered than before. The abuse of *stage players*, wherewith I find the country much troubled, may easily be reformed, they having no commission to play in any place without leave; and therefore, if by your willingness they be not entertained, you may soon be rid of them."[1] CHAP. X. His invective against a theatre company.

His progress in science we may judge of by his dogmatic assertion that "the metals are six, and no more; gold, silver, copper, tin, lead, and iron; and they all proceed originally from sulphur and quicksilver, as from their father and mother."[2]

He is charged by Bacon with talking a great deal in company, and aiming at jocularity from the bench; but he associated chiefly with dependants, who worshipped him as an idol; and the only jest of his that has come down to us consoles us for the loss of all the rest: COWELL'S INTERPRETER[3] being cited against an opinion he had expressed when Chief Justice, he contemptuously called the learned civilian Dr. *Cow-heel*.[4] His solitary joke.

Yet we are obliged to regard a man with so little about him that is ornamental, or entertaining, or attractive, as a very considerable personage in the his- His greatness as a lawyer and a judge.

1. It is supposed to have been out of revenge for this charge, that Shakspeare parodied his invective against Sir Walter Raleigh, in the challenge of Sir Andrew Aguecheek.—See Boswell's Shakspeare, ii. 442.

2. 3 Inst. ch. xx.

3. John Cowell, a civilian, born at Ernsborough, Devonshire, about 1554. He received his education at Eton School, and next at King's College, Cambridge, where heproceeded to his degree of Doctor in Civil Law, and became professor in that faculty, and Master of Trinity Hall. In 1607 he published in 4to his "Interpreter," or Explanation of Law Terms, which the House of Commons caused to be burnt, on account of its being too favorable to the regal prerogative. Sir Edward Coke was a great enemy to the author, and used to call him, by a miserable pun, Dr. *Cow-heel*. Died Oct. 11, 1611. He also wrote "Institutes of the Laws of England, in the same method as Justinian's Institutes," 1605.—*Cooper's Biog. Dict.*

4. Cowell had given great offence by asserting that the King was not bound by the laws, insomuch that by order of the House of Commons he was committed to custody, and his book was publicly burnt.—*Wilson's Memor. Cantabrig.*, p. 60.

CHAP. X. tory of his country. Belonging to an age of gigantic intellect and gigantic attainments, he was admired by his contemporaries, and time has in no degree impaired his fame. For a profound knowledge of the common law of England he stands unrivalled. As a judge, he was not only above all suspicion of corruption, but, at every risk, he displayed an independence and dignity of deportment which would have deserved the highest credit if he had held his office during good behavior, and could have defied the displeasure of the Government. To his exertions as a parliamentary leader, we are in no small degree indebted for the free constitution under which it is our happiness to live. He appeared opportunely at the commencement of the grand struggle between the Stuarts and the people of England. It was then very doubtful whether taxes were to be raised without the authority of the House of Commons; and whether, parliaments being disused, the edicts of the King were to have the force of law. There were other public-spirited men, who were ready to stand up in defence of freedom; but Coke alone, from his energy of character, and from his constitutional learning, was able to carry the PETITION OF RIGHT; and upon his model were formed Pym[1] and the patriots who vindicated that noble law on the meeting of the Long Parliament.

His great services to posterity.

Coke as an author.

He is most familiar to us as an author. Smart legal practitioners, who are only desirous of making money by their profession, neglect his works, and sneer at them as pedantic and antiquated; but they

1. In the second Parliament of Charles I., John Pym was one of the managers of Buckingham's impeachment, and in the third he took a prominent part in the debates about the Petition of Right. Clarendon thus describes his position in 1640: "He seemed to all men to have the greatest influence upon the House of Commons of any man; and in truth I think he was at that time, and for some months after, the most popular man, and the most able to do hurt, that hath lived in any time."—*Low and Pulling's Dict. of Eng. Hist.*

JOHN PYM.

After Samuel Cooper.

CHAP. X.

continue to be studied by all who wish to know the history and to acquire a scientific and liberal knowledge of our juridical and political institutions.

His Reports.

I have already mentioned his REPORTS, the first eleven parts of which he composed and published amidst his laborious occupations as Attorney General and Chief Justice. The *twelfth* and *thirteenth* parts were among the MSS. seized by the Government when he was on his death-bed. In consequence of an address by the House of Commons to the King on the meeting of the Long Parliament, seven years after, they were restored to his family, and printed. Although inferior in accuracy to their predecessors, they were found to contain many important decisions on political subjects, which he had not ventured to give to the world in his lifetime.[1]

Their value.

There are now more volumes of law reports published every year than at that time constituted a lawyer's library.[2] In the eighty years which elapsed between the close of the Year-Books and the end of the 16th century, Plowden,[3] Dyer,[4] and Kielway were

1. The first three parts were published in 1601, the fourth and fifth in 1603, and the following six parts between 1606 and 1616, when the Reporter presided in C. P. or K. B. These were all originally printed in Norman French. The 12th and 13th parts did not see the light till 1654 and 1658, when they appeared in an English translation; the use of French in law proceedings having been forbidden by an ordinance of the Long Parliament. The whole have been lately most admirably edited by my friend Mr. Farquhar Fraser.

2. There were then only twelve volumes of Reports extant, of which nine were YEAR-BOOKS. The compilations called "Abridgments," however, were dreadfully bulky.

3. Edmund Plowden, an eminent lawyer, born at Plowden, Shropshire, 1518. He studied for three years at Cambridge, and then entered the Middle Temple, of which he afterwards became Reader. A writ was directed to him calling upon him to take upon himself the state and degree of Sergeant-of-law, but being a Catholic, and therefore unable to take the oaths, he was never actually created a Sergeant, though he is not unfrequently so entitled. He steadily adhered to the Catholic religion, and was frequently employed in opposition to the established authorities. Died Feb. 6, 1584–85. His celebrated "Reports," first published in French 1571, appeared in an English dress 1779, and again 1816 —*Cooper's Biog. Dict.*

4. Sir James Dyer, a judge, born at Roundshill, Somersetshire, about

CHAP. X. the only reporters in Westminster Hall. In the great case of the POSTNATI,[1] Coke tells us of the new plan which he adopted of doing justice to the Judges:

Coke's mode of settling the law.

"And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully, truly, and sincerely as possibly I can; howbeit, seeing that almost every judge had in the course of his argument a particular method, and I must only hold myself to one, I shall give no just offence to any, if I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question."[2]

Notwithstanding the value of his Reports, no reporter could venture to imitate him. He represents a great many questions to be "*resolved*" which were quite irrelevant, or never arose at all in the cause; and these he disposes of according to his own fancy. Therefore he is often rather a codifier or legislator than a reporter; and this mode of settling or reforming the law would not now be endured, even if another lawyer of his learning and authority should arise. Yet all that he recorded as having been adjudged

1512. From Oxford he went to the Middle Temple, where he was called to the degree of a Sergeant. He afterwards became Speaker of the House of Commons. In 1557 he was appointed a Justice of the Common Pleas, of which court he was made chief in the reign of Queen Elizabeth. Died March 24, 1581–82. His reports are held in great estimation.—*Cooper's Biog. Dict.*

1. Case of the Postnati. On the accession of James I. to the throne of England, it became a question whether his Scottish subjects, born after his accession to the English throne (*postnati*), were aliens in England or not. The Scots contended that they were not, and the same view was taken by the Judges in the House of Lords. In the House of Commons it was contended that a statute would be required to naturalize them. The point was decided in the Court of Exchequer Chamber, when the friends of an infant born in Scotland after 1603 sought to establish his right to hold land in England. Ten of the twelve Judges decided that the *postnatus* was not an alien in England.—*Low and Pulling's Dict. of Eng. Hist.*

2. 7 Rep. 4a.

was received with reverence.[1] The popularity of his Reports was much increased by the publication of a metrical abstract or rubric of the points determined, beginning with the name of the plaintiff. Thus:

A metrical abstract of points determined.

Hubbard: "If lord impose excessive fine,
The tenant safely payment may decline." (4 Rep. 27.)
Cawdry: "'Gainst common prayer if parson say
In sermon aught, bishop deprive him may." (5 Rep. 1.)

His *opus magnum* is his Commentary on Littleton, which in itself may be said to contain the whole common law of England as it then existed. Notwithstanding its want of method and its quaintness, the author writes from such a full mind, with such mastery over his subject, and with such unbroken spirit, that every law student who has made, or is ever likely to make, any proficiency, must peruse him with delight.

"Coke upon Littleton."

He apologizes for writing these Commentaries in English, "for that they are an introduction to the knowledge of the national law of the realm; a work necessary, and yet heretofore not undertaken by any, albeit in all other professions there are the like. I cannot conjecture that the general communicating these laws in the English tongue can work any inconvenience."[2]

His apology for writing in English.

This work, which he thus dedicates—

"HÆC EGO GRANDÆVUS POSUI TIBI, CANDIDE LECTOR"—

was the valuable fruit of his leisure after he had been tyrannically turned out of office, and in composing it he seems to have lost all sense of the ill usage under which he had suffered, for he refers in his Preface to "the reign of our late sovereign lord King James of *famous and ever blessed memory.*"[3]

His reference to the reign of James.

1. Bacon's Works, v. 473. 2. Preface. P. xxxvii.

CHAP. X. First Institute.

The First Institute may be studied with advantage, not only by lawyers, but by all who wish to be well acquainted with the formation of our polity, and with the manners and customs prevailing in England in times gone by. If Hume, who was, unfortunately, wholly unacquainted with our juridical writers, had read the chapters on **Knights' Service, Socage, Grand Serjeantie, Frankalmoigne, Burgage,** and **Villenage,** he would have avoided various blunders into which he has fallen in his agreeable but flimsy sketch of our early annals. After Bacon, in his Essays and in his philosophical writings, had given specimens of vigorous and harmonious Anglicism which have never been excelled, Coke, it must be confessed, was sadly negligent of style as well as of arrangement;—but he sometimes accidentally falls into rhythmical diction, as in his concluding sentence: "And, for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the lovelinesse of temperance, the stabilitie of fortitude, and the soliditie of justice."

Second, Third, and Fourth Institutes.

His other "Institutes," as he called them, published under an order of the House of Commons,[1] are of very inferior merit. The Second Institute contains an exposition of MAGNA CHARTA and other ancient statutes; the Third treats of criminal law;[2] and the

1. Journals, 12th May, 1641. "Upon debate this day had in the Commons House of Parliament, the said House did then desire and hold it fit that the heir of Sir Edward Coke should publish in print the Commentary on Magna Charta, the Pleas of the Crown, and the Jurisdiction of Courts, according to the intention of the said Sir Edward Coke; and that none but the heir of the said Sir Edward Coke, or he that shall be authorized by him, do presume to publish in print any of the aforesaid books or any copy hereof." This order was made the very same day on which the Earl of Strafford was beheaded.

2. The most curious chapter is on "conjuration, witchcraft, sorcery, or enchantment," in which he tells us of wizards

"By rhymes that can pull down full soon
From lofty sky the wandering moon,"

Fourth explains the jurisdiction of all courts in the country, from the Court of Parliament to the Court of Pie Poudre. He was likewise the author of a Book of "Entries," or legal precedents; a treatise on Bail and Mainprise; a compendium of Copyhold Law, called "The Complete Copyholder;" and "A Reading on Fines and Recoveries," which was regarded with high respect till these venerable fictions were swept away.

He represents himself as taking no great delight in legal composition, and I most heartily sympathize with the feelings he expresses:

Extract from Epilogue to Fourth Institute.

"Whilst we were in hand with these four parts of the Institutes, we often having occasion to go into the city, and from thence into the country, did in some sort envy the state of the honest ploughman and other mechanics; for one, when he was at his work, would merrily sing, and the ploughman whistle some self-pleasing tune, and yet their work both proceeded and succeeded; but he that takes upon him to write, doth captivate all the faculties and powers both of his mind and body, and must be only attentive to that which he collecteth, without any expression of joy or cheerfulness whilst he is at his work."[1]

His passionate love of his profession.

He had a passionate attachment to his own calling, and he was fully convinced that the blessing of Heaven was specially bestowed on those who followed it. Thus he addresses the young beginner:

"For thy comfort and encouragement, cast thine eyes upon the sages of the law that have been before thee, and never shalt thou find any that hath excelled in the knowledge of the laws but hath sucked from the breasts of that divine knowledge, honesty, gravity, and integrity, and, by the goodness of God, hath obtained a greater blessing and ornament than any other profession to their family and posterity. It is an undoubted truth, that the just shall flourish as the palm-

and highly applauds the Legislature for punishing with death "such great abominations."

1. Epilogue to 4th Institute.

CHAP. X. tree, and spread abroad as the cedars of Lebanus. Hitherto, I never saw any man of a loose and lawless life attain to any sound and perfect knowledge of the said laws; and on the other side, I never saw any man of excellent judgment in the laws but was withal (being taught by such a master) honest, faithful, and virtuous." "Wherefore," he says, "a great lawyer never dies *improlis aut intestatus*,[1] and his posterity continue to flourish to distant generations."[2]

His views on religion and on ecclesiastical patronage.

In his old age he agreed with the Puritans, but he continued to support the Established Church; and, a great peer threatening to dispute the rights of the Dean and Chapter of Norwich, he stopped him by saying, "If you proceed, I will put on my cap and gown, and follow the cause through Westminster Hall."[3] From his large estates he had considerable ecclesiastical patronage, which he always exercised with perfect purity, saying, in the professional jargon of which he was so fond, "Livings ought to pass by *Livery and Seisin*, and not by *Bargain and Sale*."[4]

The distribution of his time.

He certainly was a very religious, moral, and temperate man, although he was suspected of giving to LAW a considerable portion of those hours which, in the distribution of time, he professed to allot to PRAYER and the MUSES, according to his favorite Cantalena,—

> "Sex horas somno, totidem des legibus æquis,
> Quatuor orabis, des epulisque duas,
> Quod superest ultra sacris largire camœnis."[5]

1. "Without offspring or without property."

2. See Preface to "Second Report."

3. Lloyd's State Worthies, p. 825.

4. He tried to carry a law that on every presentation the patron should be sworn against simony, as well as the incumbent.—*Roger Coke's Vindication*, p. 266.

5. "Give six hours to sleep, as many to the study of just laws. Pray four hours, and give two to refreshment. All that remain, bestow upon the sacred Muses."

Thus varied:

> "Six hours to law, to soothing slumber seven,
> Eight to the world allow—the rest to Heaven."

CHAP. X.

His style of living.

His usual style of living was plain, yet he could give very handsome entertainments. Lord Bacon tells us that "he was wont to say, when a great man came to dinner at his house unexpectedly, 'Sir, since you sent me no notice of your coming, you must dine with me; but, if I had known of it in due time, I would have dined with you.'"[1] He once had the honor of giving a dinner to Queen Elizabeth, and she made him a present of a gilt bowl and cover on the christening of one of his children;[2] but he was never very anxious about the personal favor of the sovereign, and he considered it among the felicities of his lot that he had obtained his preferments *nec precibus, nec pretio*.[3] Notwithstanding his independence, King James had an excellent opinion of him, and, having failed in his attempts to disgrace him, used to say, "Whatever way that man falls, he is sure to alight on his legs."

His habits and manners.

Sir Edward Coke was a handsome man, and was very neat in his dress, as we are quaintly informed by Lloyd: "The jewel of his mind was put into a fair case, a beautiful body with comely countenance; a case which he did wipe and keep clean, delighting in good clothes, well worn; being wont to say that the outward neatness of our bodies might be a monitor of purity to our souls."[4] "The neatness of outward apparel," he himself used to say, "reminds us that all ought to be clean within."[5] The only amusement in which he indulged was a game of bowls; but, for the sake of his

Or—

"Six hours to law, to soothing slumbers seven,
Ten to the world allot, and all to Heaven."

See Macaulay's Essays, vol. i. p. 367.

1. Apophthegms, 112.
2. Nichol's Progresses of Elizabeth, iii. 467, 568.
3. "Neither by prayers nor bribes."
4. Worthies, ii. 297.
5. There are many portraits and old engravings of him extant,—almost all representing him in his judicial robes, and exhibiting features which, according to the rules of physiognomy, do not indicate high genius.

CHAP. X. health, he took daily exercise either in walking or riding, and, till turned of eighty, he never had known any illness except one slight touch of the gout.

Contemporary testimonies in his favor.

His temper appears to have been bad, and he gave much offence by the arrogance of his manners. He was unamiable in domestic life; and the wonder rather is, that Lady Hatton agreed to marry him, than that she refused to live with him. Nor does he seem to have formed a friendship with any of his contemporaries. Yet they speak of him with respect, if not with fondness. "He was," said Spelman, "the founder of our legal storehouse, and, which his rivals must confess, though their spleen should burst by reason of it, the head of our jurisprudence."[1] Camden declared that "he had highly obliged both his own age and posterity;"[2] and Fuller prophesied that he would be admired "while Fame has a trumpet left her, and any breath to blow therein."[3]

He is unjustly censured by Hallam.

Modern writers have treated him harshly. For example, Hallam, after saying truly that he was "proud and overbearing," describes him as "a flatterer and tool of the Court till he had obtained his ends."[4] But he does not seem at all to have mixed in politics till, at the request of Burleigh, he consented to become a law officer of the Crown; and although, in that capacity, he unduly stretched the prerogative, he at no time betrayed any symptom of sycophancy or subserviency. From the moment when he was placed on the bench, his public conduct was irreproachable. Our Constitutional Historian is subsequently obliged to confess that "he became the strenuous asserter of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid and patriotic old age, the faults which we

1. Rel. Spelm. p. 150.
2. Britannia, Iceni, p. 351.
3. Worthies, Norfolk, p. 251.
4. Const. Hist. i. 455.

CHAP. X.

cannot avoid perceiving in his earlier life."[1] In estimating the merit of his independent career, which led to his fall and to his exclusion from office for the rest of his days, we are apt not sufficiently to recollect the situation of a "disgraced courtier" in the reign of James I. Nowadays, a political leader often enhances his consequence by going into Opposition, and sometimes enjoys more than ever the personal favor of the sovereign. But, in the beginning of the 17th century, any one who had held high office, if forbidden "to come within the verge of the Court"—whether under a judicial sentence or not,—was supposed to have a stain affixed to his character, and he and those connected with him were shunned by all who had any hope of rising in the world.

The merit of his independent career estimated.

Most men, I am afraid, would rather have been Bacon than Coke. The superior rank of the office of Chancellor, and the titles of Baron and Viscount, would now go for little in the comparison; but the intellectual and the noble-minded must be in danger of being captivated too much by Bacon's stupendous genius and his brilliant European reputation, while his amiable qualities win their way to the heart. Coke, on the contrary, appears as a deep but narrow-minded lawyer, knowing hardly anything beyond the wearisome and crabbed learning of his own craft, famous only in his own country, and repelling all friendship or attachment by his harsh manners. Yet, when we come to apply the test of moral worth and upright conduct, Coke ought, beyond all question, to be preferred. He never betrayed a friend, or truckled to an enemy. He never tampered with the integrity of judges, or himself took a bribe. When he had risen to influence, he exerted it strenuously in support of the laws and liberties of his country, instead of being the

Whether would you have been Coke or Bacon?

Coke to be preferred for moral worth and upright conduct.

1. Const. Hist. i. 476.

CHAP. X. advocate of every abuse and the abettor of despotic sway. When he lost his high office, he did not retire from public life "with wasted spirits and an oppressed mind," overwhelmed by the consciousness of guilt,—but, bold, energetic, and uncompromising, from the lofty feeling of integrity, he placed himself at the head of that band of patriots to whom we are mainly indebted for the free institutions which we now enjoy.

Part taken by Lady Hatton in the civil war.

Lady Hatton, his second wife, survived him many years. On his death she took possession of the house at Stoke Pogis, and there she was residing when the civil war broke out. Having strenuously supported the Parliament against the King,—when Prince Rupert[1] approached her with a military force she fled, leaving behind her a letter addressed to him, in which, having politely said "I am most heartily sorry to fly from this dwelling, when I hear your Excellency is coming so near it, which, however, with all in and about it, is most willingly exposed to your pleasure and accommodation," she gives him this caution: "The Parliament is the only firm foundation of the greatest establishment the King or his posterity can wish and attain, and therefore, if you should persist in the unhappiness to support any advice to break the

1. Prince Rupert, the third son of Frederick, King of Bohemia, by Elizabeth, daughter of James I., was born 1619, and received an education adapted to the military service. In the civil wars of England, whilst his elder brother became a pensioner to the Parliament, Prince Rupert adhered steadfastly to his royal uncle, and defeated the rebels in several engagements, for which the King honored him with the Garter, and made him a peer. The Prince, however, was more successful as a naval commander than on the land, particularly after the Restoration, in the great Dutch war, on the conclusion of which he led a retired life, occupied wholly in scientific pursuits. He invented a composition called "prince's metal," improved the strength of gunpowder, and constructed a piece of ordnance that would carry several bullets with the utmost speed. He also found out a method of fusing blacklead; but his principal discovery was that of engraving in mezzotinto, and there are some prints executed by him in this way. He died in London Nov. 29, 1682, and was buried in Westminster Abbey.—*Cooper's Biog. Dict.*

Parliament upon any pretence whatsoever, you shall concur to destroy the best groundwork for his Majesty's prosperity."[1] CHAP. X.

Sir Edward Coke, by his first wife, had seven sons, but none of them gained any distinction except Clement, the sixth, who, being a member of the House of Commons at the beginning of the reign of Charles I., in the debate upon the impeachment of the Duke of Buckingham, had the courage to use these words: "It is better to die by an enemy than to suffer at home:" for which there came a message of complaint from the Crown, and he would have been sent to the Tower,[2] but for the great respect for the ex-Chief Justice, who was sitting by his side, and disdained to make any apology for him. Coke's descendants. Feb. 1627.

Roger Coke, a grandson of the Chief Justice, in the year 1660 published a book entitled "Justice Vindicated," which, although without literary merit, contains many curious anecdotes of the times in which the author lived. Roger Coke's "Justice Vindicated."

In 1747, Thomas Coke, the lineal heir of the Chief Justice, was raised to the peerage by the titles of Viscount Coke and Earl of Leicester; but on his death the male line became extinct. The family was represented, through a female, by the late Thomas Coke, Esq., who, inheriting the Chief Justice's estates and love of liberty, after representing the county of Norfolk in the House of Commons for half a century, was,

1. British Museum. Stoke Pogis House, so memorable in our legal annals, one of the places of confinement of Charles I. when in the power of the Parliament, and celebrated by Gray in his "Long Story," having passed from the Gayers, the Halseys, and the Penns, is now the property of my valued friend and colleague, the Right Honorable Henry Labouchere. A column has been erected in the park to the memory of Sir Edward Coke; but there is no other vestige in the parish of his existence, and there are no traditional stories concerning him in the neighborhood.

2. 2 Parl. Hist. 50.

CHAP. X. in 1837, created Viscount and Earl of Leicester, titles now enjoyed by his son. Holkham I hope may long prove an illustration of the saying of the venerable ancestor of this branch of the Cokes, that "the blessing of Heaven specially descends on the posterity of a great lawyer."

CHAPTER XI.

LIVES OF THE CHIEF JUSTICES FROM THE DEMISE OF SIR EDWARD COKE TILL THE ESTABLISHMENT OF THE COMMONWEALTH.

CHAP. XI. A.D. 1616.

Sir Henry Montagu.

His character.

To lessen the odium of Sir Edward Coke's violent removal from the office of Chief Justice of the King's Bench, there was selected as his successor a man who was very inferior to him in learning and ability, but who was generally popular, and who was capable of performing the part with decent credit. It used to be said of him, "He is perfectly qualified to be a Fellow of All Souls;[1] for if *mediocriter doctus*, he is *bene natus* and *bene vestitus*."[2] Not only was he remarkable for being well born, and dressing genteelly, but he was very good-looking, he had sprightly parts, and his manners were delightful. Though idly inclined, he was capable of occasional application; and all that he had acquired he could turn to the best advantage. In morals he was accommodating; but he would do nothing grossly dishonorable. This was a man to get on in the world and to avoid reverses of fortune, much better than the possessor of original genius, profound knowledge, and unbending integrity.

His family.

Sir Henry Montagu, the subject of the following sketch, who added fresh splendor to an illustrious line, was the grandson of Sir Edward Montagu, whom I have commemorated as making a distinguished figure in the reigns of Henry VIII., Edward VI., and Queen Mary; being a younger son of the eldest son of

1. All Souls College, Oxford, founded in 1437 by Archbishop Chichele.
2. "Moderately learned, he is well born and well dressed."

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that Chief Justice. He was born in his father's castle of Boughton, in Northamptonshire, about the middle of the reign of Queen Elizabeth. While yet a baby, a wizard, on examining the palm of his right hand, foretold that he would be "the greatest of the Montagus." This was, then, believed to be a true prophecy; but was interpreted by the supposition that his elder brothers would all die in infancy, and that the whole of the possessions of the family would centre in him,—not that he was to be Chief Justice of England, Lord Treasurer, and an Earl.

His education.

I do not find any mention of his school; but we know that he studied at Christ's College, Cambridge; and it is said that, while there, he showed good-nature, exuberant spirits, and attention to external accomplishments, which made him a general favorite, although he had fallen into some irregularities. Having to make his own bread, at a time when younger sons had nothing to expect but an education becoming their birth, he resolved to try his luck in the law, in which his ancestor had been so prosperous; and he was entered a student of the Middle Temple. Here he showed a great talent for speaking at the "*Moots*," but he was remiss in his attendance at the "*Readings*," or lectures; and he was much better pleased to frequent the ordinaries and the fencing-schools in Alsatia.[1]

His standing as a student of the Middle Temple.

1. One of the streets which open upon the right of Fleet Street still bears the name of *Whitefriars*, which it derives from the convent of the Brotherhood of the Virgin of Mount Carmel, founded by Sir Richard Grey in 1241. The establishment of one of the earliest theatres in London in the monastic hall of Whitefriars was probably due to the fact of its being a sanctuary beyond the jurisdiction of the Mayor and Corporation, who then and ever since have opposed theatrical performances within the City. The first playhouse was at Blackfriars, and Whitefriars followed in 1576. After the Dissolution, this district retained the privilege of sanctuary, and thus it became the refuge for troops of bad characters of every description. It obtained the name of Alsatia, a name which is first found in Shadwell's play, "The Squire of Alsatia," and to which Sir Walter Scott has imparted especial interest through "The Fortunes of Nigel." In the reign

JAMES I.

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However, by a few weeks' *cramming*, he got decently well through the examinations and exercises which were then required as tests of proficiency before being called to the bar. Having put on his gown, he was desirous of obtaining practice; but his plan was to get on by bustling about in society, by making himself known, and by availing himself of the good offices of his powerful relatives,—rather than by shutting himself up in his chambers, or by constantly taking notes in the Courts at Westminster.

His professional progress. A. D. 1601.

Although he was employed in some flashy actions for *scan. mag.*, and in some prosecutions which arose out of brawls in taverns, he had not for several years any regular business, and he was beginning to despond, when a new parliament was called. He determined to try his luck in the political line, and he was returned to the House of Commons as member for Higham Ferrers. This was Queen Elizabeth's last parliament, in which the country party was so strong that he thought he should best come forward as a patriot. Accordingly, he joined those who made such a vigorous stand against monopolies that the Queen was obliged in prudence to promise to abandon them. He delivered an animated speech in support of a bill to abolish them, pointing out that the proceeding against

His speeches in the House of Commons.

of James I. a sensation was created here by a singular crime in high life. Young Lord Sanquhar had his eye put out while taking lessons in fencing from John Turner, the famous fencing-master of the day. Being afterwards in France, the young King Henry IV., after inquiring kindly about his accident, said condolingly but jokingly, and "does the man who did it still live?" From that time it became a monomania with Lord Sanquhar to compass the death of the unfortunate Turner, though two years elapsed before he was able to accomplish it—two years in which he dogged his unconscious victim like a shadow, and eventually had him shot by two hired assassins at a tavern which he frequented in Whitefriars. The deputy murderers were arrested, and then Lord Sanquhar surrendered to the mercy of the Archbishop of Canterbury, but he was sentenced to death, and was hung before the entrance of Westminster Hall.—*Hare's Walks in London*, vol. i. p. 114.

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them in the last parliament by petition had proved wholly fruitless.[1]

But he gained the greatest *éclat* by impugning the doctrine that "all the goods of the subject belong to the sovereign, who may resume the whole, or any part, as occasion requires." This doctrine was boldly laid down by Sergeant Heale, who said, "I marvel much, Mr. Speaker, that the House should hesitate about a subsidy asked by the Queen, when all we have is her Majesty's, and she may lawfully at her pleasure take it from us; yea, she hath as much right to all our lands and goods as to any revenue of her crown." This calling forth *coughing*, and cries of OH! OH! he added, "I can prove what I have said by precedents in the times of Henry III., King John, and King Stephen."

His stout defence of popular rights.

Mr. Montagu: "That there was much robbery, public and private, in those reigns, no man may dispute; but I do deny that in those reigns, or in any other reign before or since the coming in of the Conqueror, is any precedent to be found of any tax being lawfully levied except by the will of the great council of the nation. If all the preambles of subsidies be looked into, you shall find they are declared to be '*of free gift.*' Although her Majesty asks a subsidy, it is for us to give it, and not for her to exact it. As for the King taking the goods of the subject, there is the precedent of Edward III. having the tenth fleece of wool and the tenth sheaf of corn; but that was by grant of the Commons at his going to the conquest of France, because all the money then in the realm would not have been any way answerable to raise the great mass he desired. Centuries ago it has been *declared*, the King assenting, that no talliage shall be levied in England but by authority of all the states of the realm."[2]

He is elected Recorder of London. A.D. 1604.

This was not the way to be made Attorney or Solicitor General, or to gain any favor from the Court, —but by such stout defences of popular rights he rendered himself so acceptable to the City of London

1. 1 Parl. Hist. 920.

2. 1 Parl. Hist. 921.

that he was elected Recorder,—although it was said that he aided his interest in this quarter by his attentions to the wives of the aldermen.

Whatever means he employed, he was now in high favor eastward of Temple Bar;[1] and in James's first

1. Temple Bar (till 1878) ended the Strand, and marked the division between the City of London and the Liberty of Westminster. It was never a city gate, but, as defining the City bounds, was, according to ancient custom, invariably closed, and only opened when a sovereign approached the City on some public occasion. When the monarch arrived, one herald sounded a trumpet, another herald knocked, a parley ensued, the gates were flung open, and the Lord Mayor presented the sword of the City to the sovereign, who returned it to him again. Strype says that "anciently, there were only posts, rails, and a chain" at Temple Bar. It is first mentioned as Barram Novi Templi in a grant of 1301 (29 Edward I.), but we have no definite idea of it till the sixteenth century. In the time of Henry VII. it is believed that a wooden edifice was erected, and was the gate beneath which the bier of Elizabeth of York, on its way from the Tower to Westminster, was sprinkled with holy water by the abbots of Bermondsey and Westminster. We know that it was "newly paynted and repayred" for the coronation of Anne Boleyn (1533), and that it was "painted and fashioned with battlements and buttresses of various colors, richly hung with cloth of arras, and garnished with fourteen standards of flags" (1547) for the coronation of Edward VI. It was by this "Tempull Barre" that Sir Thomas Wyatt was taken prisoner. Being summoned to surrender, he said he would do so to a gentleman, when Sir Maurice Berkeley rode up, and "bade him lepe up behind him, and so he was carried to Westminster." The last Temple Bar was built in 1670. Charles II. promised (but never paid) a large contribution towards it from the revenue he received from licensing the then newly-invented hackney coaches. Sir Christopher Wren was the architect and Joshua Marshall the mason. Bushell, a sculptor who died mad in 1701, was employed to adorn it with four feeble statues, those on the west representing Charles I. and Charles II., those on the east Elizabeth and James I. The statue of the popular Elizabeth used annually to receive an ovation on the anniversary of her accession, which was kept as the chief festival of Protestantism, till after the coming of William III., when Protestant ardor was transferred to Guy Fawkes' day. No one saw Temple Bar without connecting it with the human remains —dried by summer heats, and beaten and occasionally hurled to the ground by winter storms—by which it was so long surmounted. The first ghastly ornament of the Bar was one of the quarters of Sir William Armstrong, Master of the Horse to Charles II., who was concerned in the Rye House Plot, and who, after his execution (1684), was boiled in pitch and divided into four parts. The head and quarters of Sir William Perkins and the quarters of Sir John Friend, who had conspired to assassinate William III., "from love to King James and the Prince of Wales," were next exhibited, "a dismal sight," says Evelyn, "which many pitied."

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parliament he was returned as one of the four members to represent the City in the House of Commons. But he thought that he had gained all that could be expected from popular courses; and, being admitted into the presence of the new sovereign when carrying up a City address, he contrived to gain his favor by some observations on the divine right of kings, and the wonderful circumstance that James united in his person not only the claims of the red and the white roses, but of the Saxon and Norman dynasties. In consequence, Mr. Montagu was desired to kneel down, and, having received a gracious blow from the royal sword, to "rise Sir Henry."

He becomes a courtier and is knighted.

He now warmly supported the Ministers; and, in proof of their confidence, he was placed at the head of a committee to review the statutes of the realm, and he was nominated as manager of a conference with the Lords concerning the abolishing of the Court of Wards.[1]

The next head raised here was that of Joseph Sullivan, executed for high treason in 1715. Henry Osprey followed, who died for love of Prince Charlie in 1716; and Christopher Layer, executed for a plot to seize the King's person in 1723. The last heads which were exposed on the Bar were those which were concerned in the "rebellion of '45." The spikes which supported the heads were only removed in the present century. It was in front of the Bar that the miserable Titus Oates stood in the pillory, pelted with dead cats and rotten eggs, and that De Foe, placed in the pillory for libel on the Government, stood there enjoying a perfect ovation from the people, who drank his health as they hung the pillory with flowers. With the removal of Temple Bar an immensity of the associations of the past has been swept away. Almost all the well-known authors of the last two centuries have somehow had occasion to mention it.—*Hare's Walks in London*, vol. i. p. 51.

1. Comm. Journ., March, 1604. The Court of Wards was a court of record founded by 32 Hen. VIII., c. 46, for the survey and management of the rights of the Crown over its wards. Being joined to the Court of Liveries by 33 Hen. VIII., ch. 22, it was called the Court of Wards and Liveries. The seal of the court was kept by its chief officer, the Master of Wards. Its province was to see that the King had the full profits of tenure, arising from the custody of the heirs of his tenants being infants or idiots, from the licenses and fines for the marriage of the kings' widows, and from the sums paid for livery of seisin by the heir on entering on his estate. A Court of Wards established in Ireland by James I. compelled

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For several years he entertained warm hopes of being appointed Attorney or Solicitor General; but promotions in the law went on very slowly, insomuch that it was long before a vacancy could be found for Bacon, who was then considered as having a paramount claim. Montagu, therefore, that he might be raised to the bench on the first favorable opportunity, agreed in the mean while to become a King's Sergeant. Accordingly, he took the coif by writ in the usual form, on the 4th of February, 1611, and he was created a King's Sergeant by patent under the Great Seal a few days after.[1]

He is made King's Sergeant. A.D. 1611.

Continuing Recorder of London, he particularly distinguished himself in the festivities which took place in the City on the infamous and fatal marriage between the Earl and Countess of Somerset. It was not thought inconsistent with the gravity of his office that he should dance a measure with the bride, who was at this time all gayety and frolic, although she had just done a deed which, when it was discovered, filled mankind with horror.

A.D. 1613.

Three years afterwards, the guilty pair being put on their trial for the murder of Sir Thomas Overbury, Sergeant Montagu appeared as counsel against them. He had a very delicate task to perform; for the King, though compelled by public opinion to permit the trial, wished to spare his favorite; and, dreadfully afraid of the disclosures which might be made if one

He conducts the prosecution against the Earl and Countess of Somerset.

all heirs in the King's custody to be educated as Protestants, and enforced the oath of supremacy as a condition of livery of seisin. The jurisdiction of the Court of Wards was unduly extended, and became very oppressive under the first two Stuart kings. On Feb. 24, 1645, the House of Commons "passed a vote that the Court of Wards itself, and all wardships, tenures, licenses for alienation, etc., should be taken away;" and the Lords concurred therein. The Court was finally abolished by the statute 12 Car. II., ch. 24, which destroyed military tenures.—*Low and Pulling's Dict. of Eng. Hist.*

1. Dugd. Ch. Ser. 103.

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with whom he had been so familiar should be driven to extremity, had with his own hand written this caution as to the manner in which he wished the prosecution to be conducted: "*Ye will doe well to remember in your præamble that insigne, that the only zeal to justice maketh me take this course, and I have commandit you not to expatiate, nor digresse upon any other points that may not serve clearlie for probation or inducement of that point quhairof he is accused.*"

May 25, 1616.

When the Earl was brought before the Lord High Steward and Court of Peers, Montagu proceeded to open the case against him with fear and trembling,—anxious at once to comply with the King's wishes, and to appear to discharge his duty. Two yeomen of the guard were stationed ready to throw a cloth over the head of the prisoner, and to remove him from the hall, as soon as he should begin to say any thing offensive against the King, "the Lieutenant of the Tower having told him roundly, that, if in his speeches he should tax the King, the justice of England was to stop him, and all the people would cry '*away with him!*' and the evidence should go on without him; and, then the people being set on fire, it would not be in the King's will to save his life."

He opens the case against the Earl.

Thus Sergeant Montagu began: "My Lord High Steward of England, and you my Lords, this cannot but be a heavy spectacle unto you to see that man, that not long since in great place, with a white staff, went before the King, now at this bar hold up his hand for blood; but this is the change of fortune, nay, I might better say, the hand of God and work of justice, which is the King's honor." He then gave a softened narrative of the leading facts of the case, and concluded by admonishing the peers to remember that the prisoner might be guilty, although at the time the murder was done he was in the King's palace, and

COURT OF WARDS AND LIVERIES ABOUT 1590.

From a Picture in the Collection of the Duke of Richmond.

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Sir Thomas Overbury was in the Tower; as "heretofore David, in the like case, was charged with the murder of Uriah; and though David was under his pavilion, and Uriah in the army, yet David was adjudged by Almighty God to be the murderer."

Somerset, trusting to the promise of a pardon which had been joined to the threat of severity, conducted himself quietly during the trial, which terminated in a verdict of *guilty;* and the Countess was persuaded to confess her guilt upon her arraignment. There was joy among the courtiers, as if a great victory had been obtained by the nation over a foreign enemy. The King, much relieved, expressed his satisfaction with Sergeant Montagu, and promised to serve him.

The King satisfied with his conduct of the prosecution.

Sir Edward Coke, having given mortal offence to the King, and to Buckingham the new favorite, by the lofty independence which he had displayed as a judge, was soon after, on the most frivolous pretences, suspended from exercising the functions of his office of Chief Justice of the King's Bench, and it was determined to dismiss him from it. James suggested Sergeant Montagu as a fit successor; and Bacon, the Attorney General, his adviser, who was then in the near prospect of obtaining the Great Seal for himself, on account of the age and declining health of Lord Chancellor Ellesmere, said that "a better choice could not be made." Returning home from an audience on this subject, Bacon thus wrote to the King:

He is appointed Chief Justice of the King's Bench. Nov. 13.

"I send your Majesty a warrant to the Lord Chancellor for making forth a writ for a new Chief Justice, leaving a blank for the name to be supplied by your Majesty's presence; for I never received your Majesty's express pleasure in it. If your Majesty resolve on Montagu, as I conceive and wish, it is very material, as these times are, that your Majesty have some care that the Recorder succeeding be a temperate and discreet man, and assured to your Majesty's service."

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Nov. 14. Next day Montagu's appointment as Chief Justice passed the Great Seal, and a few days after he was solemnly installed in the Court of King's Bench at Westminster. On this occasion there was a grand procession from the Temple to Westminster Hall: "First went on foot the young gentlemen of the Inner Temple; after them the barristers according to their seniority; next the officers of the King's Bench; then the said Chief Justice himself, on horseback, in his robes, the Earl of Huntingdon on his right hand, and the Lord Willoughby of Eresby on his left, with above fifty knights and gentlemen of quality following."[1]

The procession at his installation.

When he entered the court he first presented himself at the bar, with Sergeant Hutton on his right hand, and Sergeant Moore on his left. The Lord Chancellor, seated on the bench, then delivered to him the writ by which he was constituted Chief Justice, and thus addressed him upon the duties of his new office. Lord Ellesmere's very spiteful speech, it will be observed, was spoken *at* Sir Edward Coke, and the virtues ascribed to old Montagu were meant to indicate the offences for which the cashiered Chief Justice had incurred the royal displeasure:

Lord Ellesmere's inaugural address to Chief Justice Montagu.

"This is a rare case, for you are called to a place vacant not by death or cession, but by a motion and deposing of him that held the place before you. It is dangerous in a monarchy for a man, holding a high and eminent place, to be ambitiously popular; take heed of it. In hearing of causes you are to hear with patience, for patience is a great part of a judge; better hear with patience, prolixity and impertinent discourse of lawyers and advocates, than rashly, for default of the lawyer to ruin the client's cause: in the one you lose but a little time; by the other the client loseth his right, which can

1. Dugd. Or. Jur. p. 98. The only procession of this sort I ever witnessed was when Lord Tenterden took his seat as a peer in the year 1827. The barristers, according to their seniority, all then attended him to the House of Lords.

Lord Ellesmere's address, continued.

hardly be repaired. Remember your worthy grandfather, Sir Edward Montagu, when he sat Chief Justice in the Common Pleas: you shall not find that *he* said vauntingly, that he would make 'Latitats' *latitare;*[1] when *he* did sit Chief Justice in this place, he contained himself within the words of the writ to be 'Chief Justice,' as the King called him '*ad placita coram nobis tenenda;*'[2] but did not arrogate or aspire to the high title of 'Capitalis Justitia Angliæ,' or 'Capitalis Justitiarius Angliæ,' an office which Hugh de Burgh and some few others held in times of the barons' wars, and whilst the fury thereof was not well ceased.[3] He never strained the statute 27 Edw. III. c. 1 to reach the Chancery, and to bring that court and the ministers thereof, and the subjects that sought justice there, to be in danger of *premunire*, an absurd and inapt construction of that old statute.[4] *He* doubted not but if the King, by his writ under his Great Seal, commanded the judges that they should not proceed *Rege inconsulto*, then they were dutifully to obey.[5] *He* challenged not powers from this court to correct all misdemeanors, as well extrajudicial as judicial, nor to have power to judge statutes void, if he considered them against common right and reason, but left the parliament and the King what was common right and reason.[6] Remember the removing and putting down your late predecessor, and by whom,—which I often remember unto you, that it is the great King of Great Britain,[7]—whose great wisdom and royal virtue, and religious care for the weal of his

1. This alludes to a controversy between the courts for *custom*, on which the profits of the Judges mainly depended. The "latitat" was a contrivance to take causes into the King's Bench from the Common Pleas.

2. "For holding pleas in our presence."

3. Whoever has done me the honor to read the previous part of this volume, will be aware that the Chancellor is here egregiously mistaken, for there were "Chief Justiciars" from the Conquest till the end of the reign of Henry III.; and the title of "Chief Justice of England," which Coke assumed, had been borne by many of his predecessors after the nature of the office had been altered.

4. This refers to the controversy about staying, by injunction out of Chancery, execution on common-law judgments.

5. This is a sarcasm upon Coke's greatest glory,—that he would not allow the King to interfere with the regular administration of justice.

6. Here he touches Coke, who, in Dr. Bonham's case, had talked nonsense about a statute being void if contrary to reason.

7. The title which James had assumed without authority of Parliament, and by which he delighted to be called.

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subjects, and for the due administration of justice, can never be forgotten."

Montagu's answer.

Montagu thus answered:

"My most honorable Lord: I must acknowledge the great favors I have received from his Majesty; for, when I do consider my desert, I wonder what I am that he should exalt me to this high place. But I find the Wiseman's saying true, 'in great actions, *cor Regis in manibus Domini*,' and 'what is done, *factum est a Domino*.'[1] I will not inquire into my vow, but I will pay my vow and *pro posse meo*.[2] I will endeavor my best. It hath been a fashion of those that have gone before me to excuse themselves; and this I might do better than they; yet I dare not disable myself, lest I should tax my master's judgment. God I hope will supply what is defective in me. My Lord, what a spur have you put to prick me forward in mentioning my grandfather!" After enlarging on the merits of this worthy sage, he adds, "I will, for my own part, avoid four faults: idleness, corruption, cowardliness,—and I will not be a heady judge. First, I will not be idle nor over-busy. For the second, I have no need to be corrupt, neither in action nor affection, for I have estate sufficient. And, for my courage, if I fear, let me be amerced: I will be a lion in courage, not in cruelty. And for the fourth, I will be glad of good counsel, and I will not be busy in stirring questions, especially of jurisdictions. It comforts me to see the sages who sit there [the puisnies]. And yet I am discomfited in three things, in the loss of my profit, pleasure, and liberty. But I will devote myself *Deo, Regi, et Legi*."[3]

The writ being then read, he took the oaths, mounted to the bench, and was placed in the seat of Chief Justice.[4]

His standing as Chief Justice.

The new Chief Justice had a very slender stock of law, but much good sense and knowledge of the

1. "The heart of the King is in the hands of the Lord," and "what is done, has been done by the Lord."

2. "In accordance with my ability."

3. The motto on his rings when he was called Sergeant. "To God, to the King, and to Law."

4. See Cro. Jac. 407. Moore's Reports, 826–830.

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world. He was pronounced to be "a perfect gentleman," and from the uniform courtesy and kindness with which he treated the bar, there was a general disposition to support him. He had one steady puisne on whom he could rely, Mr. Justice Doderidge,[1] and with his aid he not only despatched the business decently well, but, from his ready elocution, and power of representation, he was regarded by the public as a great Judge. He always himself felt diffident and uncomfortable, and he often wished that "the time might come when he should hear no more of *Executory devises*, or *Recoveries with double voucher*."

He awards execution against Sir Walter Raleigh. Oct. 28, 1618.

The only proceeding of much public interest in his court while he was Chief Justice was the awarding of execution against Sir Walter Raleigh, after the return of this extraordinary man from the delusive expedition to Guiana. When it was resolved to sacrifice him with a view to appease the indignation of the Spaniards, and it was found that he had done nothing while intrusted with foreign command which could be construed into a capital offence, he was brought up before the Judges of the King's Bench, that they might doom him to die under the sentence pronounced fifteen years ago,—since which, by authority under the Great Seal, he had been put at the head of a fleet and an army, and been authorized to exercise the power of life and death over the King's subjects. He now pleaded that this was equivalent to a pardon:

Raleigh's plea.

"By that commission," said he, "I gained new life and vigor; for he that hath power over the lives of others, must surely be master of his own. In the 22d Edw. III., a man was indicted for felony, and he showed a charter whereby it appeared that the King had hired him for the wars in

1. Sir John Doddridge, or Doderidge, was born at Barnstaple, Devonshire, 1555, and educated at Exeter College, Oxford. He was appointed a Justice of the King's Bench 1613, and so continued till his death on Sept. 13, 1628.—*Cooper's Biog. Dict.*

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Gascony,—and it was allowed to be a pardon. Under the commission, I undertook a journey to honor my sovereign, and to enrich his kingdom; but it had an event fatal to me, the loss of my son, and the wasting of my whole estate."

Montagu expounds the law.

Montagu, C. J.: "Sir Walter Raleigh, this which you now speak touching your voyage is not to the purpose; there is no other matter now in question here but concerning the judgment of death formerly given against you. That judgment it is now the King's pleasure, for certain reasons best known to himself, to have executed, unless you can show good cause to the contrary. Your commission cannot in any way help you, for by that you are not pardoned. In felony, there may be an implied pardon, as in the case you cite; but in treason, you must show a pardon by express words, and not by implication. There was no word tending to pardon in all your commission; and, therefore, you must say something else to the purpose; otherwise, we must proceed to give execution."

Raleigh puts himself on the mercy of the King.

Sir Walter Raleigh: "If your opinion be so, my Lord, I am satisfied, and must put myself on the mercy of the King, who I know is gracious. Concerning that judgment at Winchester passed so long ago, I presume that most who hear me know how that was obtained; nay, I know that his Majesty was of opinion that I had hard measure therein, and if he had not been anew exasperated against me, certain I am I might (if I could by nature) have lived a thousand and a thousand years before he would have taken advantage thereof."

Montagu mitigates the judgment of execution with "the oil of comfort."

Montagu, C. J.: "Sir Walter Raleigh, you had an honorable trial, and it were wisdom in you now to submit yourself, and to confess that your offence did justly draw down the judgment then pronounced upon you. During these fifteen years you have been as a dead man in the law, and might at any minute have been cut off; but the King in mercy spared you. You might justly think it heavy, if you were now called to execution in cold blood; but it is not so; for new offences have stirred up his Majesty's justice to move him to revive what the law had formerly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these virtues, which now you shall have occasion to use. Your faith hath heretofore been questioned; but I am satisfied that you are a good Christian, for your book, which is an

admirable work, doth testify as much. I would give you counsel, but I know you can apply unto yourself far better counsel than I am able to give you. Yet, with the good Samaritan in the Gospel, who, finding one in the way wounded and distressed, poured oil into his wounds and refreshed him, so will I now give unto you the oil of comfort; though (in respect that I am a minister of the law), mixed with vinegar. Fear not death too much nor too little—not too much, lest you fail in your hopes—nor too little, lest you die presumptuously. The judgment of the Court is, *that execution be granted;* and may God have mercy on your soul!"[1] CHAP. XI.

It must be admitted that Montagu's language on this occasion forms a striking contrast with the opprobrious epithets which had been used by his predecessor at the original trial; and I know not that any share of the infamy of the new proceeding is to be imputed to him: he had only to declare what the law was, and he expounded it soundly; for in strictness the attainder could only be done away with by letters patent under the Great Seal, reciting that it was for treason, and granting a free pardon.[2] He has no share in the infamy of this proceeding.

The life of a common-law judge became more and more irksome to Montagu. He complained not only of the duties cast upon him for which he was not altogether fit, but of the society he was obliged to keep: sitting all the morning at Westminster, he was expected to dine at Sergeants' Inn, where, in their "compotations," his "companions" talked of nothing but the points which they had ruled upon their circuits, and the cases depending before them in their several courts. The gayety he had was "grand day in term," or a "reader's feast," when, for the amusement of the judges, the barristers danced with each other in the His life as a Judge becomes irksome to him.

1. Jardine's Criminal Trials, vol. i. pp. 485–520.

2. Lingard truly says that the Chief Justice's address to Raleigh was "conceived in terms of respect unusual on such occasions."—Vol. ix. p. 172.

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halls of the Inns of Court. He thought he was better fitted to be a statesman than a lawyer; and he was sure that, holding a political office, he should at any rate pass his time more agreeably.

Dec. 14, 1620. He becomes Lord High Treasurer and a peer.

At last his wishes were gratified, and, in the end of the year 1620, he became Lord Treasurer, and was created a peer by the titles of Baron Kimbolton in the county of Huntingdon, and Viscount Mandevil. It is said that this arrangement cost him the sum of 20,000*l.*

He by no means found that the change answered his expectations. Buckingham, arbitrary and rapacious, was sole minister, and wished to engross the profits as well as power of all offices under the Crown. Lord Chancellor Bacon, who was supposed to be some check upon the favorite, stood on the brink of the precipice from which he was soon after precipitated.

Jan. 30, 1621.

The new Viscount was ushered into the House of Lords, with the usual solemnities, on the 30th of January, 1621, when the memorable parliament met which put an end to *monopolies* and *judicial corruption* in England.

His part in the deliberations concerning Mompesson and Bacon.

He took an active part in guiding the deliberations of the Peers on the trial of Sir Giles Mompesson, impeached by the Commons for the oppressions of which he had been guilty under royal grants giving him the exclusive right to deal in commodities;—and he was appointed a manager for the Lords in the conferences between the two Houses which ended in the impeachment of Lord Bacon for bribery. The conscience-stricken defendant having besought their Lordships to "be merciful to a broken reed," they had only to consider of the sentence. A wish was expressed that this should be pronounced by the Viscount Mandevil, long accustomed to judicial proceedings; but he, considering that the illustrious delinquent had been his rival, his friend, and his patron,—with the delicacy of feeling

He declines to pronounce sentence on Bacon.

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which always distinguished him, declined the invidious task; and his successor, Sir James Ley, the new Chief Justice, was appointed speaker for the occasion.

It was expected that Lord Mandevil would now receive the Great Seal; but he probably did not desire the elevation, and at any rate it better suited the views of the Government to select for the Chief Judge of the land a Welsh curate, who had never been in a court of justice in his life, and who had nothing of law beyond a few scraps which he had picked up when private secretary to a former Lord Chancellor. While he was learning the A B C of equity, the Great Seal was put into commission, and Lord Mandevil was prevailed upon to consent to be first commissioner. The Duke of Richmond,[1] and Sir Julius Cæsar,[2] Master of the Rolls, were associated with him; and the latter did the actual business of the court till it suited Williams to appear as Lord Keeper.

He becomes First Commissioner of the Great Seal. July 10, 1621.

In less than a twelvemonth from the time of his receiving the Treasurer's wand,—on account of a difference with Buckingham, he was obliged to resign it, and to be contented with the office of Lord President of the Council.[3] This office he retained during the

He is induced to be Lord President of the Council.

1. Ludovic Stuart, second Duke of Richmond and Lennox, born in 1574, was a son of the first Duke of Lennox, and a cousin of James I. of England. He gained the favor of that King, who created him Duke of Richmond in 1623. He died, without issue, in 1624.—*Thomas' Biog. Dict.*

2. Sir Julius Cæsar, born at Tottenham, Middlesex, 1557. His father, a Genoese, was physician to Queens Mary and Elizabeth, who held him in great esteem. Julius was educated at Magdalen Hall, Oxford, from whence he went to Paris, where he took the degree of Doctor of Civil Law. In 1583 he was made Master of the Requests, Judge of the Admiralty, and Master of St. Katharine's Hospital, near the Tower. James I. conferred on him the honor of knighthood, and made him Chancellor of the Exchequer, which office he resigned 1614, on being appointed Master of the Rolls. Died April 28, 1636.—*Cooper's Biog. Dict.*

3. Clarendon says, "Before the death of King James, by the favor of the Duke of Buckingham he was raised to the place of Lord High Treasurer of England; and within less than a year afterwards, by the withdrawing of that favor, he was reduced to the almost empty title of President of

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remainder of the present, and the early part of the succeeding, reign. Without taking any conspicuous part, he seems ever after to have acquiesced in, and supported, all the measures of the Court. In consequence, in 1626, he was created Earl of Manchester, the preamble of his patent containing a pompous recital of his public services. The following year he exchanged the Presidency of the Council for the Privy Seal, which he continued to hold till his death. "When Lord Privy Seal," says Fuller, "he brought the Court of Requests[1] into such repute, that what formerly was called the Almes Basket of the Chancery, had in his time well nigh as much *meat* in, and *guests* about it (I mean suits and clients), as the Chancery itself."[2] "He was," says Lord Clarendon, "a man of great industry and sagacity in business, which he delighted in exceedingly; and preserved so great a vigor of mind, even to his death, that some, who had known him in his younger years, did believe him to have much quicker parts in his age than before."[3] He lived to see the meeting of the Long Parliament; but, on account of his years, and the influence of his son, he escaped the vengeance prepared for other authors of the tyranny inflicted on the nation for eleven years, during which no legislative assembly had been allowed to meet, "He was, unhappily, too much used as a check upon the Lord Coventry; and when that Lord perplexed their counsels and designs with inconvenient objections in law, the authority of the Lord Manchester, who had trod the same paths, was still called

A.D. 1626.

A.D. 1627. He becomes Lord Privy Seal.

His mental qualities.

the Council, and, to allay the sense of the dishonor, created Viscount Mandeville. He bore the diminution very well, as he was a wise man, and of an excellent temper."—*Reb.* i. 84.

1. An ancient court of equity in England, inferior to the Court of Chancery, and presided over by the Lord Privy Seal.—*Chambers' Encyc.*, vol. iii. p. 202.

2. Fuller, ii. 169.

3. Rebell. i. 84.

upon; and he did too frequently gratify their unjustifiable designs and pretences. He died in lucky time,"[1] —on the 10th of November, 1642, in the eighteenth year of his age. It must be admitted that he was possessed of very valuable qualities both for public and private life; and when we consider how much he accomplished, and the ways to greatness pursued by most of his contemporaries, the negative praise is creditable to him that he can be charged with no act of violence or corruption. He piqued himself on his consistency, and took for his motto, which is still borne by his descendants, "*Disponendo me, non mutando me.*"[2]

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His death. A.D. 1642.

The praise to be accorded him.

His eldest son, Edward,[3] was one of the most distinguished men who appeared in the most interesting period of our history, having, as Lord Kimbolton, vindicated the liberties of his country in the senate, as Earl of Manchester in the field, and having afterwards mainly contributed to the suppression of anarchy by the restoration of the royal line.[4]

His descendants.

Charles, the fourth Earl, was created Duke of Manchester by George I.; and William, the fifth Duke, is

1. Rebell. i. 85.

2. "My opinion once formed, it cannot be altered."

3. Sir Edward Montagu, Earl of Manchester, an English general, born in 1602, was the son of Henry, first Earl of Manchester. He was styled Lord Kimbolton before his father's death (1642). Having joined the opposition to the Court about 1640, he acquired great popularity. In 1642 he was impeached for treason, with Hampden and four other members of Parliament, whom the King attempted to seize in the House. He was appointed a general of the army of Parliament in 1643, and coöperated with Fairfax at the victory of Marston Moor (1644). Manchester and Essex were charged by Cromwell with temporizing, and with being averse to a decisive victory of the popular party, and the command was taken from them by the "Self-denying Ordinance" (1644). At the Restoration (1660) he was appointed Lord Chamberlain by Charles II. Died in 1671. "He was distinguished," says Hume, "by humanity, generosity, and every amiable virtue."—*Thomas' Biog. Dict.*

4. He was a *quasi* legal character, and I might almost claim to be his biographer, for he was a Lord Commissioner of the Great Seal under the Commonwealth, and, as Speaker of the House of Lords, conducted their judicial business. He again acted in this capacity at the meeting of the Convention Parliament, till Lord Chancellor Clarendon was sworn in.

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the present representative of Sir Henry Montagu, the Lord Chief Justice.[1]

We are now in the period of our juridical annals when the office of Chief Justice of the King's Bench was considered a step to political advancement. On the promotion of Chief Justice Montagu to be Lord Treasurer, he was succeeded as Chief Justice by SIR JAMES LEY, who, in his turn, was promoted to be Lord Treasurer. This lawyer, although he filled such high offices, and lived to be an Earl, seems to have owed his elevation mainly to his mediocrity, for he never exhibited much talent either in his profession or in parliament; and, not having committed any considerable crimes, nor conferred any benefits on his generation, he is forgotten in Westminster Hall, and his name is hardly noticed by historians.

Sir James Ley.

His mediocrity.

His origin and education. A.D. 1569.

He was descended of an ancient family, long seated at Ley, in the county of Devon; but, being a younger son, he had to fight his way in the world. At the age of sixteen he was sent to Brazen-nose College, Oxford. Having taken a bachelor's degree there, he was transferred to Lincoln's Inn, where he is said to have devoted himself very assiduously to the study of the

May 1, 1577.

Multiplication of the Montagus.

1. The descendants of the first Chief Justice must now be reckoned by hundreds of thousands. Pepys, in his diary of the 22d of September, 1665, has the following passage: "Among other discourse concerning long life, Sir John Minnes saying that his great-grandfather was alive in Edward the VI.'s time; my Lord Sandwich did tell us how few there have been of his family since King Harry VIII., that is to say, the then Chief Justice, and his son and the Lord Montagu, who was father to Sir Sidney, who was his father. And yet, what is more wonderful, he did assure us from the mouth of my Lord Montagu himself, that, in King James's time (when he had a mind to get the King to cut off the entail of some land which was given in Harry VIII.'s time to the family, with the remainder in the Crown), he did answer the King in showing how unlikely it was that it ever could revert to the Crown, but that it would be a present convenience to him; and did show that at that time there were 4,000 persons derived from the very body of the Chief Justice. It seems the number of daughters in the family had been very great, and they too had most of them many children, and grandchildren, and great-grandchildren. This he tells as a most known and certain truth."

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common law; but he seems to have been more distinguished by agreeable manners than by profound acquirements. After he had been fifteen years at the bar, he had hardly any business; and his prospects were very discouraging. On the accession of James I. he tried the experiment of becoming a Sergeant,—and this likewise failed, for he continued without clients in the Court of Common Pleas, as he had been when sitting in the Court of King's Bench. So hopeless was his condition, that he agreed to accept the appointment of Chief Justice of Ireland,—then pretty much what the office of Chief Justice of New Zealand would now be considered. He continued in exile five years, assisting the King with his new plan of colonizing Ulster, and trying to tame the *aborigines*. Being a man of prudence and address, he was very useful in this employment, and greatly recommended himself to his royal master, who expected lasting glory from civilizing a country which had become rather more barbarous since a settlement in it had first been attempted by the English. He is one of the "*Worthies*" of LLOYD, who, describing his residence in Ireland, says, "Here he practised the charge King James gave him at his going over—'not to build his estate upon the ruins of a miserable nation, but, by the impartial execution of justice, to aim at civilizing the natives instead of enriching himself.'"

His discouraging prospects at the bar.

He goes as Chief Justice to Ireland.

His usefulness in this employment.

Ley had at last leave to make a voyage home to his native country, and there he gave such a flattering account of the progress which Ireland was making under the new *régime*—ascribing much of it to himself—that James, as a reward for his eminent services, knighted him, gave him leave to resign his Irish Chief Justiceship, made him Attorney of the Court of Wards and Liveries in England, and, by warrant under the Privy Seal, assigned to him precedence in that

May 15, 1610. He returns to England and becomes a favorite with James I.

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court above Sir Henry Hobart, Attorney General to the Crown. His fortune was now made. Till the abolition of military tenure, bringing along with it the custody of the lands of minors, the right of bestowing heiresses in marriage, and other such incidents, the practice in the Court of Wards and Liveries was far more profitable than in any other court; and Sir James Ley not only had a great income with little labor, but he was much at Whitehall, and contrived to accommodate himself to all the humors of the royal pedant. The order of Baronets being established, he was one of the first batch—no doubt buying this distinction at the usual price.

He could not for a moment compare himself with Lord Coke; but when this legal leviathan was pronounced to be a public nuisance, the fashion arose of saying that a man with plain good sense and gentlemanlike habits made the best Chief Justice. Ley's ambition increasing with his wealth, he insinuated that he should make as good a Chief Justice in England as he had done in Ireland; and, without any great stretch, he asserted that he was as much of a lawyer as Montagu, who was now presiding in the King's Bench, more quietly, and more for the support of the prerogative, than Coke, so renowned for his learning. He went so far as to censure Coke for having opposed the King's desire to sit on the bench himself, like Solomon, and to give judgment between his subjects. To add to his legal reputation, he compiled and circulated in MS. "A Treatise concerning Wards and Liveries," and "Reports of Cases decided in the Court of Wards and Liveries," which were afterwards printed, and may still be seen in curious collections. Above all, he cultivated Buckingham; and it has been said that he offered the rapacious minister a large sum of money for the Chief Justiceship when it should

He aims at the Chief Justiceship of England.

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become vacant: but this statement, I apprehend, proceeded rather from the probability than from any positive evidence of the fact.

Jan. 29, 1621. He is made Chief Justice of the King's Bench.

However the arrangement might have been brought about, when Montagu received the Treasurer's staff, the collar of S.S. was put round the neck of Sir James Ley, as Chief Justice of England. The following is the account we have of his installation, on the 1st day of February, 1621: "The Lord Chancellor came and sat in the Court of King's Bench, and Sir James Ley came betwixt two of the King's Sergeants to the bar, where the Lord Chancellor made a short speech to him of the King's favor and reasons in electing him to that place; and he, being at the bar, answered thereto, showing his thankfulness, and endeavor in the due execution of his office. He then went into court, and had his patent delivered to him, which was openly read, and was a short recital only that the King had constituted him to be Chief Justice there, commanding him to attend and execute it. He was then sworn."[1]

The unimportant character of his rulings.

The very same day he decided that an innkeeper may be indicted for taking an exorbitant price for oats. Objection was taken that the indictment was bad for not alleging with sufficient certainty what was the reasonable price of oats, for it only alleged "*quod commune pretium avenarum non fuit ultra* 20*d.* the bushel;"[2] but he held the indictment sufficient in averring "*quod predictus A. B. demandavit et cepit pretium excessivum et extorsivum, viz.* 2*s.* 8*d.* a bushel."[3] A few days after, he ruled that it was actionable for one married woman to say to another married woman,

1. Cro. Jac. 610.

2. "That the common price of oats was not more than 20*d.* the bushel."

3. ["That the aforesaid A. B. demanded and received an excessive and exorbitant price, namely, 2*s.* 8*d.* a bushel."]—Johnson's case, Cro. Jac. 610.

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"Thou perjured beast, I will make thee stand upon a scaffold in the Star Chamber," though, for want of the word "art," they were spoken *adjectively*, not *positively*.[1]

During the two years and a half that he continued to preside in the King's Bench, I do not find any more important point coming before him; and if we may judge from the Reports, the business of his court must have dwindled away almost to nothing,—I presume from an opinion of his incompetency.

He is appointed Speaker of the House of Lords. May 1, 1621.

But he was engaged as one of the principal actors in a very solemn proceeding. It has been said that when Lord Bacon pleaded *guilty* to the charge of bribery, alleged against him by the House of Commons, and was deprived of the Great Seal, Ley for a short time became Lord Chancellor.[2] In reality he was only appointed Speaker of the House of Lords, the Great Seal having been put into commission.

He continued to preside on the woolsack while the House of Lords was engaged in some of the most important proceedings which have ever engaged its attention; and although he was not then a peer, and therefore had no right to debate or to vote,—as the organ of the will of the assembly he acted a conspicuous part in the eyes of the public.

He pronounces the sentence against Lord Bacon.

At first it was thought that the painful duty would have been cast upon him of calling upon Lord Bacon to kneel down at the bar, and of addressing him on the enormity of the offence for which he was to receive sentence; but the illustrious convict was, or pretended to be, too ill to attend, and the Peers, to spare the shame of a man whom they all admired for his genius, and even loved for the blandness of his manners, agreed to pass judgment upon him in his absence.

1. *Benson et ux.* v. *Hall et ux.*, Cro. Jac. 613.
2. 2 St. Tr. 1112.

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The Lords then sent a message to the other House "that they were ready to give judgment against the Lord Viscount St. Albans if they, with their Speaker, came to demand it." The Commons soon appeared at the bar, with Sir Thomas Richardson (afterwards Chief Justice of the King's Bench) at their head, and "demanded judgment on the Lord Chancellor as the nature of his offences and demerits require." Sir James Ley, remaining covered, thus gave judgment: "Mr. Speaker: Upon the complaint of the Commons against the Lord Viscount St. Alban, Lord Chancellor, this high Court, on his own confession, hath found him guilty of the crimes and corruptions complained of by the Commons, and of sundry other crimes and corruptions of like nature: Therefore this high Court, having first summoned him to attend, and having received his excuse of not attending by reason of infirmities and sickness, which he protested was not feigned, doth nevertheless think fit to proceed to judgment: And therefore this high Court doth adjudge, 1. That the Lord Viscount St. Alban, Lord Chancellor of England, shall undergo fine and ransom of 40,000*l.* 2. That he shall be imprisoned in the Tower during the King's pleasure. 3. That he shall be for ever incapable of holding any office, place, or employment in the state or commonwealth. 4. That he shall never sit in parliament, nor come within the verge of the Court."[1]

Subsequently, Sir James Ley pronounced judgment on Sir F. Mitchell, found guilty, along with Sir Giles Mompesson, of extortion and oppression under unlawful monopolies obtained from the Crown; and on Sir Henry Yelverton, the Attorney General, found guilty of corruption in preparing charters to pass the Great Seal. He had a ready eloquence, and on these occa-

1. 1 Parl. Hist. 1249.

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sions, where little knowledge of law was required, he appeared to advantage.

Impeachment of Floyde.

In the dispute between the two Houses respecting the punishment of Edward Floyde,[1] he gave important assistance to the Lords in maintaining their exclusive right to try by impeachment. When the unhappy delinquent was at last brought to the bar of the House of Lords, the following dialogue was held, being begun by Lord Speaker Ley: "What answer do you make to the uttering of the words laid to your charge?" *Floyde:* "I cannot remember that these words were ever spoken by me." *Ley:* "You must give a positive answer whether you spoke the words '*Goodman Pals-*

1. Edward Floyd, Floud, or Lloyd (d. 1648?), was a Roman Catholic barrister, who became steward in Shropshire to Lord Chancellor Ellesmere and the Earl of Suffolk. In 1621, when he was a prisoner in the Fleet at the instance of the Privy Council, he was impeached in the House of Commons for having said: "I have heard that Prague is taken; and Goodman Palsgrave and Goodwife Palsgrave have taken their heels; and as I have heard, Goodwife Palsgrave is taken prisoner." These words, it was alleged, were spoken by him in a most despiteful and scornful manner, to insult the Prince Palatine and his wife. The case led to an important constitutional decision. The Commons condemned him on May 1 to pay a fine of 1,000*l.*, to stand in the pillory in three different places for two hours each time, and to be carried from place to place upon a horse without a saddle, with his face towards the horse's tail, and holding the tail in his hand. Floyd immediately appealed to the King, who the next morning sent to inquire upon what precedents the Commons grounded their claim to act as a judicial body in regard to offences which did not concern their privileges. A debate of several days led to a conference of the two Houses, when it was agreed that the accused should be arraigned before the Lords, and that a declaration should be entered on the Journals that his trial before the Commons should not prejudice the just rights of either House. The Lords added to the severity of the first judgment. On May 26 Floyd was condemned to be degraded from the estate of a gentleman; his testimony not to be received; he was to be branded, whipped at the cart's tail, to pay 5,000*l.*, and to be imprisoned in Newgate for life. When he was branded in Cheapside he declared that he would have given 1,000*l.* to be hanged in order that he might be a martyr in so good a cause. Some days afterwards, on the motion of Prince Charles, it was agreed by the Lords that the whipping should not be inflicted, and an order was made that in future judgment should not be pronounced, when the sentence was more than imprisonment, on the same day on which it was voted. The remainder of the monstrous sentence on Floyd seems to have been carried into effect. He was liberated on July 16, 1621.—*Nat. Dict. Biog.*

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grave and Goodwife Palsgrave.'" Floyde: "I spoke not the words in such sense as is alleged." *Ley:* "Did you speak the words, or words to that effect?" *Floyde:* "It would be folly for me to deny them, because they have been proved." The House then agreed to the frightful sentence of repeated scourgings, pillorying, etc., which reflects such indelible disgrace on the House of Lords, but for which Ley cannot be answerable, as he only acted ministerially in pronouncing it.[1]

November, 1621.

When parliament again met, he ceased to be Speaker, the woolsack[2] being occupied by Williams, Bishop of Lincoln, the new Lord Keeper of the Great Seal.[3]

The Chief Justice, on his return to his ordinary judicial duties, found them very irksome, and he was impatient to get rid of them. In the end of the year 1624 he succeeded.

A.D. 1624.

Ley becomes Lord High Treasurer and a peer.

The intrigue by which he then got possession of the office of Lord Treasurer, and was raised to the peerage, will probably remain for ever in obscurity; but the probability is that he paid a large sum of money, to be divided between the King and Buckingham. However this may be, he now joyfully threw off his Judge's robes; he became Lord Ley, Baron Ley, of Ley, in the county of Devon; and, bearing the Treasurer's white wand, he took precedence of all peers, spiritual or temporal, except the Archbishop of Canterbury and the Lord Chancellor. He was at the same time admitted into the cabinet, and he continued in favor during the remainder of the reign of King James.

1. 1 Parl. Hist. 1261.

2. In the reign of Queen Elizabeth an act of Parliament was passed to prevent the exportation of wool; and that this source of national wealth might be kept constantly in mind, woolsacks were placed in the House of Peers, whereon the Judges sat.—*Brewer's Dict. Phrase and Fable.*

3. 1 Parl. Hist. 1295.

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On the accession of Charles I. he was promoted in the peerage, and took a title which afterwards became one of the most illustrious in the peerage of England, being borne by the hero of Blenheim, Ramillies, and Malplaquet.

His subserviency to the Duke of Buckingham.

The first Earl of Marlborough, though he retained his office of Lord Treasurer for several years, mixed very little in public affairs, and was a mere puppet of the Duke of Buckingham. I cannot find the slightest trace of any speech he ever made in parliament after he was created a peer. He seems still to have had great delight in associating with his old legal friends at the Inns of Court, and we find him carrying his Treasurer's staff at a grand feast given at Sergeants' Inn by his brethren of the coif.[1]

July 15, 1628. He is induced to be President of the Council. A.D. 1629.

By and by it suited the convenience of the favorite that he should be removed from his office of Lord Treasurer;[2] when he was obliged to exchange it for that of President of the Council, which he held till the 14th of March following, when he expired, in the 78th year of his age. The cause of his death is said to have been grief at the quarrel between Charles and the House of Commons after the passing of the PETITION OF RIGHT, which brought on an abrupt dissolution of the Parliament, and a resolution that the government of the country should henceforth be carried on by prerogative alone. In his last moments he was supposed to have had revealed to him the terrible times when Englishmen were to fight against Englishmen in the

1. Cro. Car. ix.

2. Lord Clarendon says, "The Earl of Marlborough was removed under pretence of his age and disability for the work (which had been a better reason against his promotion)." He observes, "There were at that time five noble persons alive who had all succeeded one another immediately in that unsteady charge, without any other person intervening: the Earl of Suffolk, the Earl of Manchester, the Earl of Middlesex, the Earl of Marlborough, and the Earl of Portland."—*Rebellion*, i. 74.

field, and the scaffold was to be crimsoned with royal gore. CHAP. XI.

He is said to have been fond of antiquarian learning, and he amused himself with writing treatises on heraldry and other kindred subjects.[1] Wood describes him as "a person of great gravity, ability, and integrity, and of the same mind in all conditions." This is flattery,—but it is curious to take a glance at one who, in an age of great men, with very slender qualifications, filled the offices of Coke and of Burleigh, and rose to higher rank than either of them. His earldom devolved successively on his two sons, Henry and William, and, on the death of the latter, in 1679, without issue, it became extinct.[2] His descendants.

The greatest honor ever conferred upon the house of Ley was by a sonnet addressed by Milton to the Lady Margaret, daughter of the Chief Justice. She resided in a battlemented mansion in Buckinghamshire, bosomed high in tufted trees, where she was "the cynosure of neighboring eyes." The poet, captivated by her charms,—as yet indifferent about popular privileges—and thinking that the surest way to win her was to praise her sire, thus apostrophized her:

Milton's sonnet to his daughter.

"Daughter to that good Earl, once President
Of England's Council and her Treasury,
Who lived in both unstained with gold or fee,
And left them both more in himself content,
'Till sad, the breaking of that Parliament
Broke him, as that dishonest victory

1. See Hearne's Collection of Curious Discourses (London, 1775, 8vo); Wood's Ath. Ox.; Bliss. ii. 441; Dugd. Ch. Ser. 105, 106.

2. Henry had been called up to the House of Lords in his father's lifetime,—affording the only instance of a Chief Justice and his son sitting together in that assembly. "March 2, 1625.—HODIE Henry Lord Ley (the eldest son of James E. of Marlborough) was brought into the House (in his parliament robes) between the Lord Crumwell and the Lord North (Garter going before), and his Lordship delivered his writ, kneeling, unto the Lord Keeper, which being read, he was brought to his place next to the Lord Deyncourt."—3 *Lords' Journals*, 512.

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At Chæronœa, fatal to Liberty,
Kill'd with report that old man eloquent!
Though later born than to have known the days
Wherein your father flourish'd, yet by you,
Madam, methinks I see him living yet,
So well your words his noble virtues praise,
That all both judge you to relate them true,
And to possess them, honored MARGARET!"

Sir Randolf Crewe.

I have very great delight in now presenting to the reader a perfectly competent and thoroughly honest Chief Justice. Considering the times in which he lived, the independent spirit which he displayed is beyond all praise. Since the Judges have been irremovable, they can take part against the abuses of power on very easy terms, and, as Lord Mansfield remarked, "their temptation is all to the side of popularity." Under the Stuarts, a judge gave an opinion against the Crown with the certainty of being dismissed from his office; and, if he retained his virtue, he had this peculiar merit, that he might have sacrificed it without becoming infamous,—for, however profligate, numerous examples would have defended him, and the world would have excused him, saying, "he is not worse than his neighbors." The name of RANDOLF[1] CREWE, therefore, ought to be transmitted with honor to the latest posterity. The more do we owe this debt of gratitude to his memory, that he was not, like Sir Edward Coke, ostentatious and blustering in the discharge of his duty. Not seeking to obtain the applause of the world, he was a quiet, modest, unambitious man, contented with the approbation of his own conscience.

His noble independence of character.

How distinguished from Coke.

His family.

The subject of this memoir was of an ancient family, who took their name from a manor, in the county

1. Christian as well as surnames were, in those days, spelt very differently. We find this name written "Randophe," "Randolph," "Randulph," "Randulf," "Ranulph," "Ranulf," "Randalf," and "Randal."

of Chester, which had belonged to them at least as far back as the beginning of the reign of Edward I. This possession had, for 250 years, belonged to owners of a different name, by the marriage of the heiress into another family, but was repurchased by our Chief Justice, the true heir male of the Crewes. CHAP. XI.

Born in the year 1588, he was the eldest son of John Crewe, of Nantwich, Esquire, a gentleman in rather reduced circumstances, but animated by a strong desire to restore the greatness of his lineage. There was one other son, Thomas; and their father resolved to breed them to the bar, as affording the best chance of honorably acquiring preferment. They were both lads of excellent parts, and he used to entertain them with stories of the greatness of their ancestors: he would point out to them the great manor of CREWE, forming a large section of the county; and he fired their imaginations with the vision of their recovering it, and again becoming "Crewes of that ilk." In the reign of Edward III. two brothers, of the name of Stratford, successively held the office of Lord Chancellor; and in recent times the two brothers Scott rose in the law to equal eminence. The two Crewes afford another instance of similar success. They were at the same school, the same college, and the same inn of court; always equally remarkable for steady application, sound judgment, and honorable conduct. They both followed exactly the same course till they were Sergeants-at-law, were knighted, and were successively Speakers of the House of Commons, —when fate varied their destiny.[1] Sir Thomas never having been a Chief Justice, I must confine my narrative to Sir Randolf. His birth.

1. The son of Sir Thomas, soon after the Restoration, was created, by Charles II., Baron Crewe of Stene in the county of Northampton; but this peerage became extinct in 1721, by the death without issue of his two sons, who had successively inherited it.

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He studies at Lincoln's Inn, A.D. 1602.

We have to boast of him as one of the ornaments of Lincoln's Inn; and in our books are the following entries respecting him, marking the several stages of his career there:

Entries respecting him.

"Cestr. Radulphus Crewe admiss̃ est in societate ibm̄ decimo tertio die Novembris anno regni Reginæ Elizabeth decimo nono ad instanc̃ Richi Wilbraham et Lawrencij Woodnett manuc—[1]

"Octo die Novembris Anno regni Elizabethe vicesimo sexto[2]

"It is orderede that theise gentlemen hereafter namede shalbe called to the utter barre, vid. Mr. Jones and Mr. Sidleye and they to be called at the nexte moote in the hall the savinge of auncientye of Mr. Jonnes and Mr. Sidleye to the utter barrestors that have not mooted. And Mr. Mollton and Mr. Crewe to be called to the barre the firste moote the nexte terme."

"Lyncolnes Inne. Ad Consilium ibm̄ tent̃ tertio die Novembris anno R^inae Eliz.: c^t quadragessimo scdo. 1600.

"Yt ys ordered that Mr. Edward Skepwyth Mr. James Leighe and Mr. Randophe Crewe shalbe called to the Benche and be published at the next pleading of the next whole Moote in the Hall."

"Lincolnes Inne. Ad Consilium ibm̄ tent nono die Maij anno r. R^nae Dnæ Elizabethe z xliiij^to 1602.

"Att this Counsell Mr. Randolphe Crewe is elected and chosen to be reader the next somer and is to have such allowances as the last somer reader hadd, and Mr. Gellybrand and Mr. Christopher are elected to be Stewardes of the Reader's Dynner."

His skill in heraldry and genealogy.

He made himself a deep black-letter lawyer; and, from early training, he was particularly fond of genealogy and heraldry. He had likewise a ready elocution, and he conducted with discretion and success the causes intrusted to him. Business flowed in upon him

1. "Cestr. Radulph Crewe was admitted into the society on the 13th day of November, in the 19th year of the reign of Queen Elizabeth."

2. "On the 8th day of November in the 26th year of the reign of Queen Elizabeth."

CHIEF JUSTICE CREW.

After W. Hollar.

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almost from his call to the bar; and, never forgetting that he might be reinstated in the family possessions, he saved every broad piece that he could lay by without being mean.

When, in the hope of obtaining a supply, a parliament was called in the spring of 1614, he had acquired such distinction that, without solicitation, he was returned to the House of Commons as member for his native county; and at the opening of the session he was elected Speaker. He "disqualified" himself in the approved fashion; but, being "allowed" by the King, with high commendation for his known learning and ability,—in demanding the privileges of the Commons he delivered a flowery address to the King, in which he contrived to allude to his Majesty's descent from Cerdic the Saxon,[1] as well as William the Conqueror and the Scottish monarchs, whom he carried back nearly to the Flood. James, much tickled with this pedigree, again expressed his satisfaction that the Commons had made so worthy a choice; but strictly commanded the new Speaker to prevent the introduction of improper bills into the House, or the use of improper topics in debate, and to urge the Commons with all speed to vote the supply of which he stood so much in need.

April 7, 1614. He is elected Speaker of the House of Commons.

Crewe had a very unhappy time of it while in the chair of the House of Commons, and conceived a disgust for politics which lasted as long as he lived. Instead of granting a supply, the leaders of the country party, now grown strong and bold, talked of nothing but grievances; and a quarrel arose between the two Houses respecting a speech made by the Bishop of Lincoln, derogatory to the dignity of the Commons.

How he fares in that capacity.

1. Cerdic, a Saxon chief, invaded Britain, and, after gaining several victories over the natives, founded the kingdom of Wessex about 519 A.D. Died about 534.—*Thomas' Biog. Dict.*

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The King blamed the Speaker; but the Speaker declared that he could do nothing more to further the King's business without trenching on those privileges which it was his duty to uphold. At the end of a few weeks, employed in useless altercation, the King abruptly put an end to the session by a dissolution.[1]

July 1, 1614.

The ex-Speaker now resolved to devote himself exclusively to his profession, and with this view he took upon himself the degree of Sergeant-at-law.[2]

He refused to accept a seat in the next parliament,

Jan., 1621.

which, meeting in January, 1621, distinguished itself by the punishment of Lord Bacon;—and he does not appear to have been again in any way brought before the public till Sir James Ley's resignation of the office of Chief Justice of the King's Bench when made Lord Treasurer.

He is appointed Chief Justice of the King's Bench.

Two Chief Justices having presided in succession who were politicians rather than lawyers, there was a cry that "Bishop Williams, the Chancellor, wished to have the common-law judges as incompetent as himself." In deference to the public voice, which even in absolute governments is not to be despised, the resolution was taken to select a good lawyer for the vacancy, and every one pointed to Sergeant Randolf Crewe as the fittest man that the profession afforded.

Jan. 26, 1625.

Accordingly, on the 26th of January, 1625, he took his seat as Chief Justice of the Court of King's Bench.

The eminent fitness of this appointment.

There never was a more laudable appointment, and he even exceeded the sanguine expectations that had been entertained of his fitness. To learning hardly inferior to that of Coke, and to equal independence of mind, he added—what Coke wanted so much—patience in hearing, evenness of temper, and kindness of heart.

On the demise of the Crown, he was immediately

1. 1 Parl. Hist. 1149-1169. 2. Dugd. Chr. Ser. 105.

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reappointed to his office, and he continued to fill it with increasing reputation till the unfortunate Charles began that course of illegal and unconstitutional measures which ended so tragically.

Crewe's decisions.

"CRO. JAC.," "CRO. CAR.," and the other Reports of that time, swarm with decisions of Lord Chief Justice Crewe; but they have almost all become obsolete, with the laws on which they were founded. There is one of his recorded judgments, however, which, as a true specimen of English eloquence in the 17th century, will continue to be read and recited as long as we are a nation.

A.D. 1626. His famous speech in the Oxford Peerage Case.

A contest arose in the year 1626, in consequence of the death of Henry de Vere, Earl of Oxford, respecting the right to that earldom, between Robert de Vere, claiming as heir male of the family, and Lord Willoughby de Eresby, claiming through a female, as heir general to the last Earl. The case was referred by Charles I. to the House of Peers, who called the Judges to their assistance. The opinion of these venerable sages was delivered in the following terms by Lord Chief Justice Crewe:

"This great and weighty cause, incomparable to any other of the sort that hath happened at any time, requires much deliberation and solid and mature judgment to determine it. Here is represented to your Lordships *certamen honoris*,[1] illustrious honor. I heard a great peer of this realm and a learned say when he lived, 'there is no king in Christendom hath such a subject as Oxford.' And well might this be said, for DE VERE came in with the Conqueror, being then Earl of Guynes; shortly after the Conquest, he was made Great Chamberlain by Henry I., the Conqueror's son, above 500 years ago. By Maud the Empress, he was created Earl of Oxford, the grant being ALBERICO COMITI, so that he was clearly an Earl before. He was confirmed and approved by Henry Fitz-Empress,

1. "A strife of honor."

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His speech, continued.

Henry II. This great honor, this high and noble dignity, hath continued ever since in the remarkable surname of De Vere, by so many ages, descents, and generations, as no other kingdom can produce such a peer in one and the selfsame name and title. I find in all this time but two attainders of this noble family, and those in stormy times, when the Government was unsettled and the kingdom in competition.

"I have labored to make a covenant with myself, that affection may not press upon judgment; for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of a house so illustrious, and would take hold of a twig or twine thread to uphold it. And yet time hath his revolutions; there must be a period and an end to all temporal things—*finis rerum*—an end of names and dignities, and whatsoever is terrene;—and why not of De Vere?—for where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more, and most of all, where is PLANTAGENET? They are entombed in the urns and sepulchres of mortality! Yet let the name of De Vere stand so long as it pleaseth God."

He then went on to show, that although the earldom was at first held in fee-simple by the family of De Vere, so that it might descend to a female, nevertheless it was entailed on *Aubrey de Vere* "*and his heirs male*" by the parliament of 16 Richard II., so that the right had descended to *Robert de Vere* as his heir male, and the *De Veres* as long as the line continued must be Earls of Oxford. The Lords were guided by this opinion,[1] but the successful claimant died without an heir male; and De Vere, along with Bohun, Mowbray, Mortimer, and PLANTAGENET, was "entombed in the urns and sepulchres of mortality."[2]

The outcome of this case.

Crewe is displaced for his honesty.

Before Sir Randolf Crewe had completed the second year of his Chief Justiceship, although reverenced by the people, he was found wholly unfit for

1. Cruise on Dignities, p. 101.

2. The title was renewed by Queen Anne in favor of Harley descended from the De Veres through a female.

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the system of government which had been determined upon by the King and his ministers. After the abrupt dissolution of Charles's second parliament without the grant of a supply, all redress of grievances being refused,—the plan was deliberately formed of discontinuing entirely the use of popular assemblies in England, and of ruling merely by prerogative. For this purpose it was indispensably necessary that the King should have the power of imposing taxes, and the power of arbitrary imprisonment. He began to exercise both these powers by assessing sums which all persons of substance were called upon to contribute to the revenue according to their supposed ability, and by issuing warrants for committing to jail those who resisted the demand. But these measures could not be rendered effectual without the aid of the Judges; for hitherto in England the validity of any fiscal imposition might be contested in a court of justice; and any man deprived of his liberty, might, by suing out a writ of *habeas corpus*, have a deliberate judgment upon the question "whether he was lawfully detained in custody or not?" Sir Thomas Darnel, Sir Edmund Hampden, and other public-spirited men, having peremptorily refused to pay the sums assessed upon them, had been cast into prison, and were about to seek legal redress for their wrongs.

Powers unlawfully exercised by the King.

Remedies at law to make these powers ineffectual.

In the coming legal contest, almost every thing would depend upon the Chief Justice of the King's Bench. According to a well-known fashion which prevailed in those times, the Attorney General, by order of the Government, sounded Sir Randolf Crewe respecting his opinions on the agitated points, and was shocked to hear a positive declaration from him that, by the law of England, no tax or talliage, under whatever name or disguise, can be laid upon the people without the authority of parliament, and that the King

Crewe's opinions on the exercise of these powers.

CHAP. XI.

can not imprison any of his subjects without a warrant specifying the offence with which they are charged. This being reported to the Cabinet, Sir Randolf Crewe was immediately dismissed from his office; and, in a few weeks after, Sir Nicholas Hyde, who was expected to be more compliant, was made Chief Justice in his stead.

Nov. 10.

When he gave his answer to the Attorney General, he was not ignorant of the punishment which he must incur, and he bore it with perfect equanimity,—rejoicing that he had done his duty, and that he was delivered from temptation.

His removal not caused by opposition to Ship-money.

It has often been said that he was removed for opposing Ship-money; but this ingenious tax had not then been devised, and, indeed, Noy, its author, was still a patriot, and one of the counsel for those who denied the legality of the present imposition. There having been no proceeding in court in which he had expressed any opinion against the prerogative, and his private conference with the Attorney General being then unknown, his dismissal seems to have caused great astonishment. Croke, the reporter, thus notices it:

"Mem. Upon Friday, the 10th of November, Sir Randolf Crewe, Chief Justice of the King's Bench, was discharged of that place, by writ under the Great Seal, for some cause of displeasure conceived against him; but for what was not generally known." [1]

Fuller, writing when the truth had been partly disclosed, says, in his quaint style,—

Fuller's account of Crewe's removal.

"King Charles' occasions calling for speedy supplies of money, some great ones adjudged it unsafe to venture on a parliament, for fear, in those distempered times, the physic would side with the disease, and put the King to furnish his necessities by way of loan. Sir Randal, being demanded his

1. Cro. Car. p. 52.

judgment of the design, and the consequences thereof (the imprisoning of recusants to pay it), openly manifested his dislike of such preter-legal courses, and thereupon, Nov. 9, A.D. 1626, was commanded to forbear his sitting in the court, and the next day was by writ discharged from his office; whereat he discovered no more discontentment than the weary travailer is offended when told that he is arrived at his journey's end." CHAP. XI.

Crewe declines being returned to parliament.

He had it in his power to be returned member for his native county, in the parliament which met soon after, and the Opposition might have been led by two ex-Chief Justices of the King's Bench; but he had neither the vigor nor the thirst for vengeance which animated Sir Edward Coke, and he preferred the repose of private life,—not being without hope of being restored to his judicial functions.

A.D. 1628.

At the end of two years he wrote the following letter to Buckingham, which is, I think, most creditable to him; for, notwithstanding his earnest desire to be replaced on the bench, he makes no concession or promise at all inconsistent with his principles:

His letter to Buckingham after his removal.

"My duty most humbly done to your grace, vouchsafe, I beseech your grace, to read the misfortune of a poor man herein, and take them into your noble thoughts, whose case is considerable. I have lived almost two years under the burden of his Majesty's heavy displeasure, deprived of the place I held, and laid aside as a person not thought of, and unserviceable, whereof I have been soe sensible, that ever since living at my house att Westminster, I have not sett my foot into any other house there or at London (saveing the house of God), but have lived private and retired as it best became me.

"I did decline to be of this late Parliament, distrusting I might have been called upon to have discovered in the public, the passages concerning my removal from my place which I was willing should be lapped up in my own busome.

"I likewise took special care if my name were touchit upon in the Comons house, that some of my friends there should doe their best to divert any further speech of me,

CHAP. XI. His letter to Buckingham, continued.

for I alwaies resolved wholly to relie upon the King's goodness, who I did not doubt would take me into his princely thoughts, if your grace vouchsafed to intercede for me. The end of the Parliament was the time when I prefixed myself to be a suitor to your grace, and I have now encouragement soe to be: the petition of right whereunto your grace was a party speaks for me, and for the right of my place, but I humbly desire favour. God doth knowe, it was a great affliction to me to deny anything commanded me, the King that my heart soe loved, and to whom I been soe bound, prince and King: but had I done it, I had done contrary to that which all his judges resolved to doe (and I only suffer), and if I had done it and they had deserted me therein, I had become a scorne to men, and had been fitt to have lived like a scritch owl in the darke; so likewise if I had done it and had been knowne to have been the leader herein, and the rest of the judges had been pressed to have done the like, the blame and the reproof would have been laid on me, and by me they might in some measure have excused themselves. But yet there was a greater obligation to restrain me than these (for these be but morall reasons), and that was the obligation of an oath, and of a conscience, against both which (then holding the place of a judge), I in my own understanding had done, had I subscribed my name to the writing which the King was then advised to require me to doe, for therein I had approved the commission, and consequently the proceedings thereupon, wherein here I had been condemned, and with how loud and shrill a voice, I leave to your grace to judge. Wherefore, most noble Lord, vouchsafe to weigh these my reasons in the ballance of your wisdom and judgement, and be soe noble and just as to excuse me to the King herein, and in a true contemplation of that noblenesse and justice, be soe good as to be the means, that I may be really restored to the King's grace and favour. Your grace has in your hands Achilles' speare which hurts and heales. I am grievously hurt, your grace hath the means to heale me to whom I make my address. The time is now fitt for me: now you are upon a forraigne expedition, you take my prayers, my wife's, and my children's with you, and I hope your journey will be the more prosperous.

"I am now in the seventieth year of my age; it is the

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general period of man's life, and my glass runs on apace. Well was it with me when I was King's serjeant, I found profitt by it: I have lost the title and place of Chiefe Justice. I am now neither the one or other; the latter makes me uncapable of the former, and since I left the Chiefe's place, my losse has been little less than 3,000*l.* already.

His letter to Buckingham, continued.

"I was by your favour in the way to have raised and renewed in some measure my poore name and familey, which I will be bold to say hath heretofore been in the best ranke of the famileys of my countrey, till by a general heir the patrimony was carried from the male line into another sirname, and since which time it hath been in a weak condition. Your grace may be the means to repair the breach made in my poor fortune, if God soe please to move you, and you will lose no honour by it. Howsoever I have made my suit to your noblenesse, and your conscience, for I appeal to both, and whatsoever my success be, I shall still appear to be a silent and patient man, and humbly submitt myself to the will of God and the King. God be with your grace, He guide and direct you, and to his holy protection I committ you, resting ever

"A most humble servant to your grace,

"Randulph Crewe.

"Westminster, 28th Junii."

On a copy of this letter, preserved among the family papers at Crewe, there is the following memorandum in the handwriting of the Chief Justice: "A little before the D. going to the Isle of Ree, he told Sir Randal, in the presence of Lord Treasurer Weston and Sir Robt. Pye, that he would at his return right him in the King's favor, for it was he that had injured him, and therefore was bound in honor to do it." However friendly the Duke's intentions might have been, the arm of Felton, within a month from the time when this remonstrance was delivered to him, for ever prevented him from carrying them into execution.

Buckingham's intention to right Crewe fails of execution.

The ex-Chief Justice then renounced all thoughts of public employment, and spent the rest of his long life rationally and happily in rural amusements, in

Crewe's mode of life in retirement.

CHAP. XI.

literary pursuits, and in social enjoyments. It happened soon after that the manor of Crewe was in the market for sale. Either of the two brothers had the means of purchasing it; but the preference was given to Sir Randolf the elder; and he was more gratified, when he took possession of it and became "Crewe of that ilk," than if he had been installed as Chancellor in the marble chair,—saying "How delighted my poor dear father would be if he could look down and see his fond wish accomplished!" Here he built a magnificent new manor-house, which was admired and copied by the men of Cheshire. Fuller says, "He first brought the model of excellent building into these remote parts; yea, brought London into Cheshire, in the loftiness, sightliness, and pleasantness of their structures."

A.D. 1641.

He lived on till the Long Parliament had sat several years, and he might actually have been present

Jan. 20.

in the House of Commons in 1641, when Mr. Hollis, inveighing against the corrupt Judges who had decided in favor of Ship-money, drew this contrast between them and a Judge who had acted well:

Hollis's panegyric upon him in the Long Parliament.

"What honor is he worthy of, who, merely for the public good, hath suffered himself to be divested and deprived of what he highly values?—such a judge as would lose his place, rather than to do that which his conscience told him was prejudicial to the commonwealth?—and this did that worthy reverend judge, the Chief Justice of England, Sir Randulf Crewe. Because he would not, by subscribing, countenance the loan in the first year of the King, contrary to his oath and conscience, he drew upon himself the displeasure of some great persons about his Majesty, who put on that project which was afterwards condemned by the Petition of Right as unjust and unlawful; and by that means he lost his place of Chief Justice of the King's Bench; and hath, these fourteen years, by keeping his innocency, lost the profit of that office which, upon a just calculation in so long a revolution of time, amounts to 26,000*l.* or thereabout. He kept his innocency

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when others let theirs go ; when himself and the commonwealth were alike deserted ; which raises his merit to a higher pitch. For to be honest when everybody else is honest, when honesty is in fashion and is *trump*, as I may say, is nothing so meritorious ; but to stand alone in the breach—to own honesty when others dare not do it, cannot be sufficiently applauded, nor sufficiently rewarded. And that did this good old man do ; in a time of general desertion, he preserved himself pure and untainted. 'Temporibusque malis ausus est esse bonus.'"[1]

July 7.

Hollis afterwards succeeded in carrying an address to the King, praying "that his Majesty would bestow such an honor on his former Judge, Sir Randolf Crewe, Knt., late Lord Chief Justice of England, as may be a noble mark of sovereign grace and favor, to remain to him and his posterity, and may be in some measure a proportionable compensation for the great loss which he hath, with so much patience and resolution, sustained." Nothing was done for him before the civil war broke out; but he had that highest reward, the good opinion of his fellow-citizens. He seems to have enjoyed the sympathy and respect of all honest men from the time of his dismissal from office. Fuller says quaintly, "The country hath constantly a smile for him for whom the Court hath a frown. This knight was out of office, not out of honor,—living long after at his house in Westminster, much praised for his hospitality." He adds, "I saw this worthy Judge in 1642, but he survived not long after."[2]

The respect entertained for him.

His death.

His last days were disturbed by the clash of arms. The struggle between the parties which, in his youth, had been carried on in St. Stephen's Chapel, and in Westminster Hall, was now transferred to Edgehill and Marston Moor. We are not informed to which

1. ["And he dared to be good though living in evil times."]—3 St. Tr. 1298.

2. Worthies, vol. ii.

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side he inclined, but the probability is, that, being a steady friend of constitutional monarchy, he dreaded the triumph of either, and that, like the virtuous Falkland, he exclaimed with a sigh, PEACE! PEACE! He languished till the 13th of January, 1646, when he expired in the eighty-seventh year of his age,—leaving Cromwell to wield the sceptre which he had seen in the hand of Queen Elizabeth. He was buried in the family cemetery at Crewe. All lawyers are familiar with his singularly shrewd physiognomy, from an admirable print of him in Dugdale's ORIGINES JURIDICIALES.

Jan. 13, 1646.

His descendants.

His male descendants remained "Crewes of that ilk" for several generations. The estate then came to an heiress, who married John Offley, Esq., of Madely, in the county of Stafford. Their son, on succeeding to it, took, by act of parliament, the name and arms of Crewe. His grandson was raised to the peerage by King George III., being created Baron Crewe, of Crewe, in the county of Chester; and the Chief Justice is represented by Richard, the third Lord Crewe.

Feb. 25, 1806.

Sir Nicholas Hyde.

We must now go back to SIR NICHOLAS HYDE, elevated to the bench that he might remand to prison Sir Thomas Darnel and the patriots who resisted the illegal tax imposed under the name of "loan," in the commencement of the reign of Charles I. He was the uncle of the great Lord Clarendon. They were sprung from the ancient family of "*Hyde of that ilk*" in the county palatine of Chester; and their branch of it had migrated, in the 16th century, into the west of England. The Chief Justice was the fourth son of Lawrence Hyde, of Gussage St. Michael, in the county of Dorset.

Before being selected as a fit tool of an arbitrary

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His reputation as a lawyer.

government, he had held no office whatever; but he had gained the reputation of a sound lawyer, and he was a man of unexceptionable character in private life. He was known to be always a stanch stickler for prerogative, but this was supposed to arise rather from the sincere opinion he formed of what the English constitution was, or ought to be, than from a desire to recommend himself for promotion. He is thus good-naturedly introduced by Rushworth:

A.D. 1626.

Succeeds Crewe.

"Sir Randolf Crewe, showing no zeal for the advancement of the loan, was removed from his place of Lord Chief Justice, and Sir Nicholas Hyde succeeded in his room: a person who, for his parts and abilities, was thought worthy of that preferment; yet, nevertheless, came to the same with a prejudice,—coming in the place of one so well-beloved, and so suddenly removed."[1]

His conduct as Chief Justice of the King's Bench.

Whether he was actuated by mistaken principle or by profligate ambition, he fully justified the confidence reposed in him by his employers. Soon after he took his seat in the Court of King's Bench, Sir Thomas Darnel, and several others committed under the same circumstances, were brought up before him on a writ of *habeas corpus;* and the question arose whether the King of England, by *lettre de cachet*,[2] had the power of perpetual imprisonment without assigning any cause? The return of the jailer, being read, was found to set

A.D. 1627.

1. 1 Rushw. 420.

2. *Lettres de cachet*, a kind of warrant formerly in use in France. They were closed with the King's petty seal, and were used for ordinary persons to quit Paris or France, or to be arrested and imprisoned. They were issued upon the royal authority alone, and not in pursuance of the judgment of a court. Numbers of them were sometimes prepared with a blank for the name of the person, and furnished to the lieutenant-general of police at Paris for use in emergencies, and occasionally also to Court favorites, who used them as instruments of personal revenge. Abuses of this kind were very frequent during the reign of Louis XV. The punishments directed by these warrants continued during the reign of Louis XV. The punishments directed by these warrants continued during the King's pleasure, and often for long periods. They were abolished by the Constituent Assembly early in the Revolution of 1789.—*Appl. Encyc.*, vol. iii. p. 532.

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out, as the only reason for Sir Thomas Darnel's detention, a warrant, signed by two privy councillors, in these words:

Sir Thomas Darnel's Case.

"Whereas, heretofore, the body of Sir Thomas Darnel hath been committed to your custody, these are to require you still to detain him, and to let you know that he was and is committed BY THE SPECIAL COMMAND OF HIS MAJESTY."

Lord Chief Justice Hyde proceeded, with great temper and seeming respect for the law, observing, "Whether the commitment be by the King or others, this Court is a place where the King doth sit in person, and we have power to examine it; and if any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him; if otherwise, he is to be remanded by us to prison again."

The arguments against the King.

Selden, Noy, and the other counsel for the prisoners, encouraged by this intimation, argued boldly that the warrant was bad on the face of it, *per speciale mandatum Domini Regis*[1] being too general, without specifying an offence for which a person was liable to be detained without bail; that the warrant should not only state the authority to imprison, but the cause of the imprisonment; and that if this return were held good, there would be a power of shutting up, till a liberation by death, any subject of the King without trial and without accusation. After going over all the common-law cases and the acts of parliament upon the subject, from MAGNA CHARTA downwards, they concluded with the *dictum* of Paul the Apostle, "It is against reason to send a man to prison without showing a cause."

Hyde, C. J.: "This is a case of very great weight and great expectation. I am sure you look for justice from hence, and God forbid we should sit here but to do justice to all

1. "By special command of their Lord, the King."

CHARLES I.

After Van Dyke.

men, according to our best skill and knowledge ; for it is our oaths and duties so to do. We are sworn to maintain all prerogatives of the King ; that is one branch of our oath,—but there is another—to administer justice equally to all people. That which is now to be judged by us is this : 'Whether, where one is committed by the King's authority, and by cause declared of his commitment, we ought to deliver him by bail, or to remand him ?'" CHAP. XI.

From such a fair beginning there must have been a general anticipation of a just judgment; but, alas! his Lordship, without combating the arguments, statutes, or texts of Scripture relied upon, said "the Court must be governed by precedents," and then, going over all the precedents which had been cited, he declared that there was not one where, there being a warrant *per speciale mandatum Domini Regis*, the judges had interfered and held it insufficient. He said he had found a resolution of all the judges in the reign of Queen Elizabeth, that if a man be committed by the commandment of the King, he is not to be delivered by a *habeas corpus* in this court, "for we know not the cause of the commitment." Thus he concluded :

Hyde holds precedents to be against a *habeas corpus* in commitments by the King without showing cause.

"What can we do but walk in the steps of our forefathers ? Mr. Attorney hath told you the King has done it for cause sufficient, and we trust him in great matters. He is bound by law, and he bids us proceed by law ; we are sworn so to do, and so is the King. We make no doubt the King, he knowing the cause why you are imprisoned, will have mercy. On these grounds we cannot deliver you, but you must be remanded."[1]

This judgment was violently attacked in both Houses of Parliament. In the House of Lords the Judges were summoned, and required to give their reasons for it. Sir Nicholas Hyde endeavored to excuse himself and his brethren from this task by representing it as a thing they ought not to do without warrant

Action taken by the Lords.

1. 3 St. Tr. 1.

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from the King. Lord Say observed, "If the Judges will not declare themselves, we must take into consideration the point of our privilege." To soothe the dangerous spirit which disclosed itself, Buckingham obtained leave from the King that the Judges should give their reasons, and Sir Nicholas Hyde again went over all the authorities which had been cited in the King's Bench in support of the prerogative. These were not considered by any means satisfactory; but, as the Chief Justice could no longer be deemed contumacious, he escaped the commitment with which he had been threatened. Sir Edward Coke, and the patriots in the House of Commons, were not so easily appeased, and they for some time threatened Lord Chief Justice Hyde and his brethren with an impeachment; but it was hoped that all danger to liberty would be effectually guarded against for the future by compelling the reluctant King to agree to the PETITION OF RIGHT. Before Charles would give the royal assent to it,—meaning not to be bound by it himself, but afraid that the Judges would afterwards put limits to his power of arbitrary imprisonment,—he sent for Chief Justice Hyde and Chief Justice Richardson to Whitehall, and directed them to return to him the answer of themselves and their brethren to this question, "Whether in no case whatsoever the King may commit a subject without showing cause?" The answer shows that they had been daunted by the denunciations of Sir Edward Coke, and that they were driven to equivocate: "We are of opinion that, by the general rule of law, the cause of commitment by his Majesty ought to be shown; yet some cases may require such secrecy that the King may commit a subject without showing the cause, for a convenient time." Charles then delivered to them a second question, and desired them to keep it very secret, "Whether, if to a *habeas corpus*

The Commons threaten Hyde with impeachment. A.D. 1628.

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there be returned a warrant from the King without any special cause, the Judges ought to liberate him before they understand from the King what the cause is?" They answered, "If no cause be assigned in the warrant, the party ought, by the general rule of law, to be liberated: but, if the case requireth secrecy, and may not presently be disclosed, the Court, in its discretion, may forbear to liberate the prisoner for a convenient time, till they are advertised of the truth thereof." He then came to the point with his third question, "Whether, if the King grant the Commons' PETITION, he doth not thereby exclude himself from committing or restraining a subject without showing a cause?" Hyde reported this response, "Every law, after it is made, hath its exposition, which is to be left to the courts of justice to determine; and, although the PETITION be granted, there is no fear of conclusion as is intimated in the question."[1]

The Judges having thus pledged themselves to repeal the act for him by misconstruing it, he allowed it to be added to the statute-book. No sooner was the parliament that passed it abruptly dissolved than it was flagrantly violated, and Selden, Sir John Eliot, and other members of the House of Commons, were arrested for the speeches they had delivered, and for requiring the Speaker to put from the chair a motion which had been made and seconded. This proceeding was more alarming to public liberty than any thing that had been before attempted by the Crown: if it succeeded, there was no longer the hope of any redress in parliament for the corrupt decisions of the common-law courts.

Prosecution against Sir John Eliot and others.

To make all sure by an extrajudicial opinion, Lord Chief Justice Hyde and the other Judges were assem-

Opinions of Chief Justice Hyde on the privileges of the House of Commons.

1. Hargrave MS. xxxii. 97.

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bled at Sergeants' Inn, and, by the King's command, certain questions were put to them by the Attorney General. The answers to these, given by the mouth of the Chief Justice, if acted upon would for ever have extinguished the privileges and the independence of the House of Commons: "That a parliament man committing an offence against the King in parliament, not in a parliamentary course, may be punished after the parliament is ended; for, though regularly he cannot be compelled out of parliament to answer things done in parliament in a parliamentary course, it is otherwise where things are done exorbitantly:" and, "That by false slanders to bring the Lords of the Council and the Judges, not in a parliamentary way, into the hatred of the people, and the Government into contempt, was punishable, out of parliament, in the Star Chamber, as an offence committed in parliament beyond the office, and besides the duty, of a parliament man."

The defendants refuse to give bail as compromising these privileges.

The parties committed were brought up by *habeas corpus*, and, the public being much scandalized, an offer was made that they might be bailed; but, they refusing to give bail, which they said would be compromising the privileges of the House of Commons, Lord Chief Justice Hyde remanded them to jail.

The Attorney General having then filed an *ex-officio* information against them for their misconduct in parliament, they pleaded to the jurisdiction of the Court "because these offences, being supposed to be done in parliament, ought not to be punished in this Court, or elsewhere than in parliament."

Chief Justice Hyde tried at once to put an end to the case by saying that "all the Judges had already resolved with one voice, that an offence committed in parliament, criminally or contemptuously, the parliament being ended, rests punishable in the Court of

King's Bench, in which the King by intendment sitteth."

The counsel for the defendants, however, would be heard, and were heard in vain; for Chief Justice Hyde treated their arguments with scorn, and concluded by observing, "As to what was said, that 'an inferior court cannot meddle with matters done in a superior,' true it is that an inferior court cannot meddle with the *judgments* of a superior court; but if particular members of a superior court offend, they are ofttimes punishable in an inferior court,—as if a judge shall commit a capital offence in this court, he may be arraigned thereof at Newgate. The behavior of parliament men ought to be parliamentary. Parliament is a higher court than this, but every member of parliament is not a court, and if he commit an offence we may punish him. The information charges that the defendants acted *unlawfully*, and they could have no privilege to violate the law. No outrageous speeches have been made against a great minister of state in parliament that have not been punished."—The plea being overruled, the defendants were sentenced to be imprisoned during the King's pleasure, and to be fined, Sir John Eliot in 2,000*l.* and the others in smaller sums.

The arguments of counsel treated with scorn.

This judgment was severely condemned by the House of Commons at the meeting of the Long Parliament, and was afterwards reversed, on a writ of error, by the House of Lords.[1]

The judgment condemned and afterwards reversed.

But Lord Chief Justice Hyde escaped the fate of his predecessor, Chief Justice Tresilian, who was hanged for promulgating similar doctrines, for he was carried off by disease when he had disgraced his office four years and nine months. He died at his house in Hampshire, on the 25th of August, 1631.

Hyde's death. A.D. 1631.

One is astonished to find judges in the seventeenth

1. 3 St. Tr. 235–335.

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century so setting law and decency at defiance, when Sir Edward Coke, and those who had carried the PETITION OF RIGHT, were still alive: but it was well understood that parliaments were never to meet again; and, if it had not been for Charles's folly in embroiling himself with the Scottish nation about episcopacy, he and his descendants might long have enjoyed absolute power, although, no doubt, in course of time, the violence of popular discontent, and the weakness of a despotic government, would at last have brought about a sudden and dreadful convulsion, such as those which we now see raging in the Continental states.

Respected and lauded by courtiers.

In justice to the memory of Sir Nicholas Hyde, I ought to mention that he was much respected and lauded by true courtiers. Sir George Croke describes him as "a grave, religious, discreet man, and of great learning and piety."[1] Oldmixon pronounces him to have been "a very worthy magistrate;" and highly applauds his judgment in favor of the power of the Crown to imprison and prosecute parliament men for what they have done in the House of Commons.

Sir Thomas Richardson.

Hyde was succeeded by a man who was still more pliant, but who was ever eager to combine popularity with Court favor. This was SIR THOMAS RICHARDSON, son of Dr. Thomas Richardson, of Hardwicke, in

1. Cro. Car. 225.—He was censured for having favorites at the bar; but the extent to which this sort of favoritism was then carried may be judged by what Roger North says of it, and what he considers its legitimate limits: "When the Lord Chief Justice Hyde was alive, he usually went the Norfolk circuit; and this judge was industriously favorable to his Lordship, calling him *cousin* in open court, which was a declaration that he would take it for a respect to himself to bring him causes: and that is the best account that can be given of a favorite; in which capacity a gentleman pretends to be easily heard, and that his errors and lapses, when they happen, may not offend the judge or hurt a cause,—beyond which the profession of favor is censurable both in judge and counsel."—*Life of Guilford*, i. 82.

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the county of Suffolk. Here he was born on the 3d of July, 1569. I find no account of his education till he was sent to study law in Lincoln's Inn. He was very diligent in his profession, and, while yet young at the bar, he was elected Recorder of Bury St. Edmund's, and of Norwich; and he obtained the appointment of Attorney General to Queen Anne, the consort of James I. Soon afterwards he took upon himself the degree of Sergeant-at-law. In the parliament which met on the 30th of January, 1621, he was returned to the House of Commons as member for St. Albans, not intending that his parliamentary duties should at all interfere with his profession, to which he was much devoted. But on the first day of the session, to his great surprise and mortification, he was elected Speaker. He *disqualified* himself not only according to ancient precedent, but *bona fide*,—and earnestly implored that the House would excuse him and proceed to a new choice. "Seeing that no excuse would serve the turn, he wept downright."[1] Unfortunately, no account is preserved of his oration before the King the following day, when he was presented for confirmation at the bar of the House of Lords.

His legal promotions.

He is compelled to serve the office of Speaker of the House of Commons.

He must have belonged to the popular party, who at last constituted the majority in the Lower House, and were thoroughly determined to punish corruption and to reform abuses. Out of respect to his office, he was knighted on his first appearance at Whitehall as Speaker. He had much more laborious duties to perform in his new office than any of his predecessors. In early times, the session of parliament did not last longer than a few days; and recently it was terminated in a few weeks,—either amicably, the required supply being granted,—or, upon an obstinate inquiry into

He is knighted. March 25, 1621.

1 4 Nich. Proc. James I., p. 651; 1 Parl. Hist. 1168.

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grievances, by an abrupt dissolution. The present session, with an interval of an adjournment, continued a whole year; and Sergeant Richardson's practice at the bar, during this long period, must have been seriously interfered with, although it was not considered incorrect that he should sit in the chair of the House of Commons in the morning, and consult with his clients at his chambers in the evening; and he was allowed to plead before the Judges of the Court of Common Pleas on the days when the House did not meet.

His services in the impeachments of Bacon, Mompesson, and Yelverton.

He rendered good service in advising the proceedings upon the impeachments carried on before the Lords against Lord Chancellor Bacon, Sir Giles Mompesson, and Sir Henry Yelverton; but he betrayed the Commons into a very serious embarrassment, by persuading them that they had power to adjudge as well as to accuse wherever any offence was committed against the state. Edward Floyde, a gentleman of family and fortune, having, after the taking of Prague, talked contemptuously of the King and Queen of Bohemia, then very popular, as "Goodman Palsgrave and Goodwife Palsgrave," was impeached as an enemy to the Protestant religion. He was accordingly arrested by order of the House of Commons; and the Speaker gave it as his clear opinion, that the Commons have power to hear and to determine as well as to accuse, where they deem it for the public good to exercise such a jurisdiction. Accordingly, Floyde was brought to the bar of the House, and, offering no sufficient defence, Mr. Speaker, after reciting the horrid words that he had spoken, thus proceeded:

The part he took in the prosecution of Floyde.

He encroaches on the jurisdiction of the Lords.

"It further appeareth that these words were spoken by you in a most despiteful and scornful manner, with a fleering and scoffing countenance, on purpose to disgrace as much as

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in you lay these illustrious and pious princes : whereupon, the Commons in parliament assembled, of their love and zeal to our sovereign Lord the King, and not minding to let pass unpunished these things that tend to the disgrace of his Majesty's issue, a part of himself, who is head of the parliament, have called you before them, and have found that the matters whereof you are impeached are true and notorious ; therefore the said Commons do adjudge and award that, for the offence you have committed, you be returned this night prisoner to the Fleete,[1] and to-morrow morning you shall be brought to Westminster into the yard before the Great Hall of Pleas, and do there stand in the pillory from nine until eleven of the clock in the forenoon, with a paper upon your hat, bearing this inscription in capital letters : FOR FALSE, MALICIOUS, AND DESPITEFUL SPEECHES AGAINST THE KING'S DAUGHTER AND HER HUSBAND : from thence you shall presently ride to the Exchange within the City of London, upon a horse without a saddle, with your face backwards towards the horse's tail, holding the tail in your hand, with the said paper on your head ; and that you do there stand in the pillory for two hours ; and from thence you shall ride in like manner to the Fleete, and be imprisoned there ; and next Friday morning you are to ride in like manner into Cheapside, and there stand in the pillory with the said paper and inscription as before, by the space of two hours, and then ride back in like manner to the Fleete ; and further, you shall pay to the King a fine of 1,000*l.*"

The Lords indignant at this.

The Lords were highly indignant at this sentence, —by no means on account of its cruelty, but because it was an encroachment on their jurisdiction. They insisted that the impeachment should go on before them ; and the other House having acquiesced, they awarded the same punishment, adding to it that Mr.

1. The great prison of the *Fleet* was only demolished in 1844, having been first used for those who were condemned by the Star Chamber. It is an evidence of the size of the river Fleet in old days, difficult as it is to believe possible now, that the prisoners used to be brought from Westminster by water, and landed at a gate upon the Fleet like the Traitor's Gate upon the Thames at the Tower.—*Hare's Walks in London*, vol. i. p. 120.

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Floyde should be whipped at the cart's tail, notwithstanding an objection was made to this by some peers "because he was a gentleman."[1]

Mr. Speaker Richardson, at the commencement of the session, had been considered a patriot; but in the course of it he yielded to the blandishments of the Court, and submitted to the royal mandates which he received from time to time. James, taking it into his head that he could, by the direct exercise of his prerogative, adjourn the two Houses of Parliament as well as prorogue them, sent down a commission to the House of Commons, ordering an adjournment from the 4th of June to the 20th of November following. The popular members opposed the reading of it, saying, that "although in compliance with a request of the King they might agree to an adjournment for a reasonable time, an adjournment could only be by a vote of the majority." But the Speaker, without putting any vote, declared the House to be adjourned till the 20th day of November, saying that this was by the King's order,—and following the form used by the Lord Chancellor in announcing a prorogation.

He adjourns parliament without putting a vote.

This point of parliamentary law was not then settled, and the Speaker's decision was acquiesced in; but he was afterwards censured by the House for "his habit of leaving the chair as often as the acts of any state officers were called in question in a manner disagreeable to the Court."[2]

A.D. 1622.

On the dissolution of the parliament in January, 1622, Richardson returned to the undisturbed pursuit of his profession; and, seeing that popularity did not lead to promotion, he now openly enlisted himself a

1. "Another question was, whether he should have his ears nailed to the pillory? And it was agreed *per plures*, not to be nailed."—1 *Parl. Hist.* 1261.

2. Guthrie, p. 754.

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retainer of the Duke of Buckingham. As a reward for his servility he was made a King's Sergeant.

He is made Chief Justice of the Common Pleas. Nov. 28, 1626.

Continuing steadily in this line, soon after the accession of Charles I. he was appointed Chief Justice of the Court of Common Pleas. His first judicial opinion indicated some degree of independence. Mr. Pine, a country squire, having a company of guests at his table, talked very irreverently of the King, saying to one who had boasted of having seen the King at Mr. Pawlet's, at Hinton, "Then hast thou seen as unwise a king as ever was; for he is carried as a man would carry a child with an apple. As for meeting him at Mr. Pawlet's, that is nothing, for I might have had him at my house; he is to be carried any whither. Before God he is no more fit to be king than Kirkwright." This Kirkwright was a well-known simpleton.

His independent opinion in the case of Pine.

For these words the Government wished that Mr. Pine should be hanged, drawn, and quartered; but,—a doubt being raised whether the mere speaking of them amounted to treason,—before bringing him to trial the question was referred to the Judges, and the Attorney General cited a great many cases in former reigns in which men had been convicted and executed for a similar offence. However, Chief Justice Richardson concurred in the opinion that "the mere speaking of the words, although they were as wicked as might be, did not amount to treason; for it had been adjudged that to charge the King with a personal vice, as to say of him 'He is the greatest whoremonger or drunkard in the kingdom,' is no treason."[1] So Mr. Pine entirely escaped, as the Crown lawyers would not acknowledge that the words merely constituted a misdemeanor.

On the next consultation of the Judges, Richardson likewise gained credit. Torture, to extort con-

1. Cro. Car. 117.

CHAP. XI. A.D. 1628.

His opinion against torture.

fessions from state criminals, had been practised by warrant from the Privy Council in every reign, at least since the time of Henry VI.; but, from the growing intelligence of the age, a question had been made respecting its legality. At last, Felton, the assassin of the Duke of Buckingham, having denied that he had been prompted to this deed by the Puritans, Laud told him "if he would not confess, he must go to the rack." He replied, "But in the extremity of torture I know not whom I may accuse; I may say that I was prompted by my Lord of London, or some other of your Lordships." They then fell into debate, whether by the law of the land they could justify putting him to the rack; and the King, being present, said, "Before any such thing be done, let the advice of the Judges be had therein, whether it be legal or no?" And his Majesty desired Sir Thomas Richardson, the Chief Justice of the Common Pleas, to say "whether it might be done by law?" adding, "if it may, I will not use my *prerogative* in this point." Richardson consulted all the Judges at Sergeants' Inn, and reported to the King their unanimous opinion, that "the prisoner ought not to be tortured by the rack, for no such punishment is known or allowed by our law."[1] Notwithstanding the King's salvo about his *prerogative*, Felton, without any further attempt to force from him that he had accomplices, was brought to trial in due course of law; and torture has never since been inflicted in England.

His moderation in the case of Chambers.

Chief Justice Richardson also showed moderation in the case of Mr. Richard Chambers, a London merchant, prosecuted in the Star Chamber for saying "that merchants are in no part of the world so screwed and wrung as in England, and that in Turkey they had more encouragement." Laud moved that, besides

1. 3 St. Tr. 367.

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being imprisoned till he made submission for his offence at the Council Board, in the Court of Star Chamber, and on the Royal Exchange, he should be fined 3,000*l.* Richardson insisted that a fine of 500*l.* would be sufficient, and he succeeded in reducing it to 2,000*l.*[1]

Considering the moderation with which he conducted himself since he was promoted to the bench, we are quite at a loss to account for a favor now conferred upon him. Hitherto no common-law judge had ever been made a peer till he had retired from the seat of justice; and a notion prevailed, that, as a writ of error lay from the courts of common law to the House of Lords, the same individual could not be a member of the court of original jurisdiction and of the court of appeal. Nevertheless it was resolved that the family of Sir Thomas Richardson should be ennobled, and that all question should be avoided as to his disqualification. From the venality of the times, the probability is, that the payment of a good round sum of money removed all the objections that might have been made to the plan. By his first marriage the Chief Justice had five sons; and he was married again to Elizabeth, daughter of Sir Thomas Beaumont, and relict of Sir John Ashburnham, ancestor of the present Earl of Ashburnham. This Elizabeth, by letters patent dated 28th of February, 1628–29, was created a peeress of Scotland by the title of Baroness Cramond, —to hold to her for life, with remainder to Thomas Richardson, eldest son and heir apparent of the Chief Justice, her husband, by Ursula his first wife,—with remainder to the heirs male of her said husband in succession.[2] Many gibes and pasquinades were elicited

A.D. 1629. His wife is made a peeress of Scotland.

1. 3 St. Tr. 373.

2. According to Crawford, this is the only instance of a female creation in the peerage of Scotland, although many Scotch peerages are descendable to females, having been limited to the first grantee and his heirs general.

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by this occurrence, for the amusement of Westminster Hall.

He is made Chief Justice of the King's Bench.

Between two and three years afterwards, the "getter of peers," as he was denominated, was elevated to be Chief Justice of England. But it is doubtful whether this step was agreeable to him. Many suppose that, as in the case of Sir Edward Coke, it was meant as a punishment for some offence he had given to the Government. He lost greatly in profit while he gained in precedence.

Oct. 24, 1631.

On the 24th of October, 1631, he was conducted to the bar of the Court of King's Bench by a large bevy of Sergeants. Lord Keeper Coventry then, in a short and rather uncomplimentary address, said, "it was his Majesty's pleasure that, for the public good, Sir Thomas Richardson should be moved to preside in the King's Bench;" and in answer he merely said that "he submitted himself to his Majesty's pleasure." Thereupon the writ appointing him was read. Having taken the oaths, he was placed on the bench, and immediately began business.

His conduct on the bench.

He presided here between three and four years, and he might have boasted—which few Chief Justices of those days could have done—that he did not do any thing very outrageous while sitting in his own court. Luckily he was not led into temptation, for during this period there were no trials for treason or sedition, and he had only such points to determine as whether an action would lie by a merchant for saying of him "that he is 1,000*l. worse than nothing*," or by a captain who had served in the wars, for saying to him "Thou art a notorious pimp."[1]

A.D. 1632. His behavior in the Star Chamber.

But he was called upon to take part in several Star Chamber cases which excited great interest. In the prosecution against Mr. Sherfield, Recorder of Salis-

1. Cro. Car. 225–403.

LORD COVENTRY.

From the Collection of the Earl of Clarendon.

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bury, for breaking painted glass in the window of a church, under an order of the vestry, obtained without leave of the Bishop, he allowed that the defendant had acted improperly, but tried to mitigate the heavy punishment proposed by Lord Strafford and Laud, saying—

"The defendant conceived it was idolatry, or the cause of idolatry. The offence was, that God the Father should be pictured there in the form of an old man in blue and red, for he never was nor ever can be pictured. Moses himself saw but his back parts. This worshipping of idols is the greatest sin of all others. It is to give God's honor unto creatures. To my knowledge Mr. Sherfield hath done much good in Salisbury since I went that circuit; so that there is neither beggar nor drunkard to be seen there. I have been long acquainted with him; he sitteth by me sometimes at church; he bringeth a Bible to church with him (I have seen it) with the Apocrypha and Common Prayer Book in it,—not of the new cut."

Instead of being dismissed from his office of Recorder, and fined 1,000*l.* as proposed, the defendant got off with a fine of 500*l.*[1]

A.D. 1633. His sentence upon Prynne.

Lord Chief Justice Richardson showed no mercy to poor Prynne when prosecuted in the Star Chamber for publishing his HISTRIO-MASTYX, which inveighed against stage plays, music, dancing, hunting, and other amusements of the King and Queen:

His condemnation of Prynne's "Histrio-Mastyx."

"My Lords," said he, "since I have had the honor to attend this court, writing and printing of books, though sharply censured, doth grow daily worse and worse. Now, forsooth, every man taketh it upon him to understand everything according to his conceit, and thinks he is nobody except he be in print.[2] We are troubled here with a book—a monster! 'Monstrum horrendum, informe, ingens;'[3] and I do

1. 3 St. Tr. 519–561.

2. Few know that the *cacoethes scribendi* ["the incurable passion for writing"] was so much complained of in England 200 years ago!

3. "A horrid monster, shapeless, huge."

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hold it a most scandalous, infamous libel to the King's Majesty, a most pious and religious King—to the Queen's Majesty, a most excellent and gracious Queen—such a one as this land never enjoyed the like—and I think the earth never had a better. I say eye never saw, nor ear ever heard, of such a scandalous and seditious thing as this misshapen monster is. What saith he in the Epistle Dedicatory, speaking of play books? 'They are printed on far better paper than most octavo and quarto Bibles, which hardly find so good a vent as they.' This monster, this huge misshapen monster! I say it is nothing but lies and venom against all sorts of people. He doth not only condemn all play-writers, but all protectors of them, and all beholders of them, and all who dance and all who sing;—they are all damned—and that no less than to hell. He asserts that 'dancing is the devil's profession,' that 'the woman who singeth is the prioress of the devil,' and that 'fiddlers are the minstrels of the devil.' I say this is a seditious libel. I protest unto your Lordships it maketh my heart to swell and my blood in my veins to boil, so cold as I am, to see this or anything attempted which may endanger my gracious sovereign, or give displeasure to his royal consort. Not to hold your Lordships longer, it is a most wicked, infamous, scandalous, and seditious libel. Mr. Prynne, I must now come to your sentence, which makes me very sorry, for I have known you long, and now I must utterly forsake you; for I find you have forsaken God and his religion, and the allegiance you owe to both their Majesties and the rule of charity to all noble ladies in the kingdom."

Prynne's sentence carried into execution.

He concluded by moving that the book should be burnt by the common hangman;—and that the author should be disbarred, degraded from his academical degrees, set twice in the pillory, lose both his ears, be fined 5,000*l.*, and be imprisoned during life. This sentence was pronounced accordingly,[1] and carried into rigorous execution.

1. 3 St. Tr. 561–592. Mr. Hume very much lauds the good intention the court thus manifested, to inspire better humor into Prynne and his brother Puritans; although he had doubts whether pillories, fines, and prisons were the best expedients for that purpose. (Hist. vol. vi. 299.)

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Richardson's ordinance against wakes and church-ales. A.D. 1634.

When left entirely to himself, Lord Chief Justice Richardson rather showed a leaning in favor of the Puritans. While sitting as judge of assize at Exeter, a complaint was brought before him of the profanation of the Sabbath, by holding, on that day, wakes and church-ales, which were said to have led to drunkenness, riot, and immorality. He thereupon not only inveighed against wakes and church-ales in his charge to the grand jury, but issued an ordinance against them, which he directed to be read in all churches within the county. The clergy complained of this as an encroachment on ecclesiastical jurisdiction, and sent up a memorial upon the subject to Archbishop Laud,[1] signed by seventy of them, to prove the antiquity and inoffensiveness of these diversions. Laud, taking it up with a high hand, immediately brought it before the Privy Council, and the Chief Justice was summoned thither to answer for his delinquency. Oldmixon[2]

1. William Laud, Archbishop of Canterbury, was born at Reading, in Berkshire, in 1573, and was educated at Oxford. He became one of the chaplains of the King about 1615, Bishop of Saint David's in 1621, and Bishop of Bath and Wells in 1626. After the accession of Charles I. he rose rapidly into great influence at Court. In 1628 he was translated to the see of London, and became the chief minister or favorite of the King. He took part in the persecution of the Puritans, and was unjustly suspected of a bias in favor of popery. In 1633 he was appointed Archbishop of Canterbury. "Of all the prelates of the Anglican Church," says Macaulay, "Laud had departed farthest from the principles of the Reformation and had drawn nearest to Rome." "Of all men then living," says Gardiner, "he [Laud] was the least fitted to be intrusted with political power. . . . His thorough belief in the unbounded efficacy of external forms and institutions, combined with his complete ignorance of human nature, would be sufficient to goad to madness any nation which might be subjected to his control." ("History of England from 1603 to 1616," vol. ii. chap. x. p. 41.) In 1640 he was impeached by the Commons and committed to the Tower. After he had been tried for treason, without obtaining a judicial sentence, the Commons passed an illegal and unjust ordinance for his execution, and he was beheaded in 1645.—*Thomas' Biog. Dict.*

2. John Oldmixon, a political writer, was born at Bridgewater, Somersetshire, 1673. He became a virulent partisan, and distinguished himself by his abuse of the Stuart family. He also accused the editors of Lord Clarendon's History with having interpolated that work ; a charge which

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says that, "when he came from the board, the Earl of Dorset,[1] meeting him with tears in his eyes, asked how he did? Judge Richardson replied, 'Very ill, my Lord, for I am like to be choked with the Archbishop's lawn sleeves.' And for this cause alone, he was, by Laud's means, to his great grief and loss, put from riding the Western, and forced to go the Essex circuit, reported the meanest of all others, and which no justice but the puisne judge or sergeant used to ride." Part of the sentence of the Privy Council being that the Chief Justice should reverse his ordinance, he did so with a very ill grace. After reciting it in an instrument under his hand and seal, he said, "But being commanded to reverse the same, I do hereby reverse it as much as in me lies; yet, I doubt not, if the Justices of the Peace will truly inform his Majesty of the grounds thereof, and of the great disorders occasioned by wakes and church-ales, his Majesty will give order to confirm it."

He is compelled to reverse this ordinance.

The Justices accordingly drew up a petition in favor of what the Chief Justice had done; but the Archbishop, being informed of what was coming,

was effectually refuted by Bishop Atterbury. It is remarkable that Oldmixon was guilty of the same crime which he falsely charged upon others; for, when employed on the first edition of Kennett's Complete History, he made many alterations in Daniel's Chronicle. He was appointed collector of the customs of Bridgewater, and died July 9, 1742. His principal works, "A History of the Stuarts;" "Critical History of England," 2 vols.; "Life of Arthur Maynwaring;" "Life of Queen Anne."—*Cooper's Biog. Dict.*

1. Edward Sackville, Earl of Dorset, was born 1590. In 1613 he fought a desperate duel near Bergen-op-Zoom, with Lord Bruce, of which an account may be seen in the third volume of *Athenæ Cantabrigienses*. He was one of the principal commanders sent in 1620 to assist Ferdinand, King of Bohemia, and was present at the memorable battle of Prague. The year following he was sent ambassador to the Court of France. In 1624, on the death of his elder brother, he succeeded to the title and estate. He was in great favor with King Charles I., who appointed him President of the Council and Lord Privy Seal. Died July 17, 1652.—*Cooper's Biog. Dict.*

LAUD, ARCHBISHOP OF CANTERBURY

After Van der Werf.

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caused a proclamation to be published in the King's name, and to be read in all churches and chapels, by which "dancing, either for men or women, archery for men, leaping, vaulting, and any such harmless recreation, after divine service on Sundays, were enjoined on all the King's loving subjects."[1]

Laud's proclamation on the subject of Sunday recreations.

Notwithstanding the hostility of Laud, Chief Justice Richardson was well respected by Charles I., who, at this period of his reign, acted as his own minister; and he retained his office till he died, on the 4th day of February, 1635, in the 67th year of his age. He was buried in Westminster Abbey, behind the choir, near the cloisters door, where may now be seen a beautiful monument in black marble erected to his memory, with his bust in his judge's cap, robes, ruff, and collar of S.S., and an inscription which, after a pompous enumeration of his offices and of his virtues, thus concludes: "Thomas Richardson fil. unicus eques aurat. Baro Scotiæ designatus patri incomparabili posuit."

A.D. 1635. Richardson's death.

He seems to have had in his own time but an indifferent reputation for honesty and veracity; and, after his death, he was more talked of as a jester than a lawyer. The following anecdote is recorded by L'Estrange:[2] "Judge Richardson, in going the West-

His jests.

1. 2 Oldmixon, 121; 3 Kennett, 71; Whitel. Mem. 17; Dart's History of Westminster Abbey.

2. Sir Roger L'Estrange was born December 17, 1616, at Hunstanton Hall, Norfolk, the seat of his father, Sir Hammond L'Estrange, author of a history of Charles I., and a commentary on the Liturgy, entitled "The Alliance of Divine Offices." The son was educated at Lynn, and in 1639 accompanied King Charles on his expedition to Scotland; but in 1644 he was made prisoner by the parliamentary forces, and sent to London, where he was condemned to be hanged as a spy. With great difficulty, however, he obtained a reprieve, but remained in Newgate four years, and then effected his escape to the Continent. In 1653 he returned, and was discharged by order of Cromwell. After the Restoration he was made licenser of the press, which place he enjoyed till the Revolution. In 1663 he set up a newspaper called "The Public Intelligencer," which

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erne Circuite, had a great flint stone throwne at his head by a malefactor, then condemned (who thought it meritorious, and the way to be a benefactor to the Commonwealth, to take away the life of a man so odious), but leaning low on his elbow, in a lazy, recklesse manner, the bullett flew too high, and only took off his hatt. Soone after, some friends congratulating his deliverance, he replyde by way of jeast (as his fashion was to make a jest of every thing),—'You see now, if I had beene an *upright* slaine.'" [1]

Characters of him by his contemporaries.

judge (intimating his reclining posture) I had been

His contemporaries did not spare him, notwithstanding his high judicial dignity, as we learn from another anecdote of L'Estrange: "The Lord Chief Justice Richardson went with Mr. Mewtis, the Clarke of the Councell, to see his house at *Gunness-bury*,[2] which was furnish't, with many pretty knacks and rarities. My Lord viewed all, and lik't well, 'but, Mr. Mewtis,' sayes he, 'if you and I agree upon the price, I must have all your fooleries and bables into the bargaine.' 'Why, my Lord,' sayes he, 'for these I will not stand with you; they may e'ene be entail'd if you pleas upon you and your heires.'" [3]

Another collection of legal jokes says: "When Charles Richardson was dead (younger son of the Lord Chief Justice, then living), some were questioning where the body should be interred. 'Why,' says one,

he dropped in 1665, when the "London Gazette" was established. In 1679 he instituted another paper, called the "Observator." In the reign of James II. he was knighted; but, as he did not concur with all the measures of that monarch, his paper was suppressed. Died September 11, 1704.—*Cooper's Biog. Dict.*

1. Anecdotes and Traditions, published by Camden Society, p. 53.

2. Gunnersbury, afterwards celebrated as the seat of the Princess Amelia, daughter of George II.

3. Anecdotes and Traditions, p. 19.

'where should he be buried but where his father *lyes*— at Westminster?'"[1] CHAP. XI.

The Chief Justice left behind a large estate to his eldest son, who, on the death of the first Baroness Cramond, became Lord Cramond; and the title was borne by the descendants of the Chief Justice till the year 1735, when it became extinct from the failure of heirs male. His descendants.

A.D. 1635. Sir John Brampston.

On the vacancy in the office of Chief Justice of the King's Bench, created by the death of Sir Thomas Richardson, the King and his Ministers were exceedingly anxious to select a lawyer fitted to be his successor. Resolved to raise taxes without the authority of Parliament, they had launched their grand scheme of Ship-money,[2] and they knew that its validity would speedily be questioned. To lead the opinions of the Judges, and to make a favorable impression on the public, they required a Chief on whose servility

1. Anecdotes and Traditions, p. 21. This reminds one of the epitaph prepared by John Clerk, Lord Eldin, for a Scotch judge:

"Here *ceaseth to lye*
The Right Honourable" etc., etc.

2. Before the Conquest the Navy was furnished by the levy of ships on the counties in proportion to the number of hundreds contained in each shire. Under the Plantagenets the port towns and the coast counties were called on to furnish ships and men. To this was added the Royal Navy, a mercenary force paid by the King, which was the beginning of the permanent Navy. As late as 1626 the fleet collected for the expedition to Cadiz was got together by contingents from the seaports. In 1634 the position of foreign affairs suggested to Charles I. the necessity of raising a fleet in order to maintain the sovereignty of the seas, assert the ownership of the North Sea fisheries, prevent the French from capturing Dunkirk, and secure the coöperation of Spain for the restoration of the Palatinate. Noy, the Attorney General, suggested that money for the equipment of ships should be levied from the coast towns. The first writ was issued in October, 1634, and, after some remonstrance from the Lord Mayor of London, generally submitted to. Next year a second writ was issued by which the inland towns and counties were also required to contribute. There was considerable opposition, and Charles obtained from ten of the Judges a

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they could rely, and who, at the same time, should have a great reputation as a lawyer, and should be possessed of a tolerable character for honesty. Such a man was MR. SERGEANT BRAMPSTON.

He was born at Maldon, in Essex, of a family founded there in the reign of Richard II. by a citizen of London, who had made a fortune in trade and had served the office of sheriff. When very young he was sent to the University of Cambridge, and there he gained high renown by his skill in disputation, which induced his father to breed him to the bar. Accordingly, he was transferred to the Middle Temple, and studied law there for seven years, with unwearied assiduity. At the end of this period he was called to the bar, having then amassed a store of law sufficient to qualify him at once to step upon the bench. Different public bodies strove to have the benefit of his advice; and very soon he was standing counsel for his own University, and likewise for the City of London,

He studies law at the Middle Temple.

general opinion that the levy of Ship-money from all was lawful (Dec., 1635). A third writ was issued in Oct., 1636, and called forth still stronger opposition, which even a second opinion from the Judges in the King's favor (Feb., 1637) could not still. A fourth writ was issued in the autumn of 1637, but none in 1638; and in Jan., 1639, the sum demanded in the fifth writ was only about a third of the amount asked in previous years, but in the next year the Government, for the second Scotch war, returned to the full amount of the earlier assessment, i.e., about 200,000*l.* It was by the second of these writs that a ship of 450 tons, manned and equipped for six months, or the sum of 4,500*l.*, was demanded from Buckinghamshire. Hampden's trial took place with respect to the twenty shillings due from lands in the parish of Stoke Mandeville. The argument on the point of law began in Nov., 1637, and judgment was finally given in June, 1638. Ship-money was vigorously attacked in the Short Parliament by Pym and Glanville; and Charles, by the advice of Strafford, was willing to allow the judgment to be carried before the House of Lords upon a writ of error, and there reversed. But the question of the abolition of the illegal military charges, and other things, prevented an agreement. When the Long Parliament met, the House of Commons on Dec. 7, 1640, the House of Lords on Jan. 20, 1641, agreed to resolutions pronouncing the levy of Ship-money illegal. A bill declaring this was brought in by Selden on June 8, 1641, and received the King's assent on Aug. 7.—*Low and Pulling's Dict. of Eng. Hist.*

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with an annual fee *pro concilio impenso et impendendo*.[1] Having been some years an "apprentice," he took the degree of Sergeant-at-law.

He starts in the "sedition line."

According to a practice very common in our profession, he had, in the language of Mr. Gurney the famous stenographer, "started in the sedition line," that is, defending persons prosecuted for political offences by the Government. He was counsel for almost all the patriots who, in the end of the reign of James I. and the beginning of the reign of Charles I., were imprisoned for their refractory conduct in the House of Commons; and one of the finest arguments to be found in our books is one delivered by him in Sir Thomas Darnel's case, to prove that a warrant of commitment by order of the King, without specifying the offence, is illegal.[2]

He goes over to the Government.

He refused a seat in the House of Commons, as it suited him better to plead for those who were in the Tower than to be sent thither himself. By and by, the desire of obtaining the honors of the profession waxed strong within him, and he conveyed an intimation, by a friend, to the Lord Keeper that it would be much more agreeable to him to be retained for the Government than to be always against it. The offer was accepted; he was taken into the councils of Noy, the Attorney General, and he gave his assistance in defending all stretches of prerogative. Promotions were now showered down upon him; he was made Chief Justice of Ely, Attorney General to the Queen, King's Sergeant, and a Knight. Although very zealous for the Crown, and really unscrupulous, he was anxious to observe decency of deportment, and to appear never to transgress the line of professional duty.

1. For counsel (already) given, and to be given (in future).
2. 3 St. Tr. 5.

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A.D. 1635. He is made Chief Justice of the King's Bench.

Noy would have been the man to be appointed Chief Justice of the King's Bench to carry through his tax by a judicial decision in its favor, but he had suddenly died soon after the Ship-money writs were issued; and, after him, Sir John Brampston was deemed the fittest person to place at the head of the common-law Judges. On the 18th of April, 1635, his installation took place, which was, no doubt, very splendid; but we have no account of it except the following, by Sir George Croke:

"First, the Lord Keeper made a grave and long speech, signifying the King's pleasure for his choice, and the duties of his place: to which, after he had answered at the bar, returning his thanks to the King, and promising his endeavor of due performance of his duty in his place, he came from the bar into court, and there kneeling, took the oaths of supremacy and allegiance: then standing, he took the oath of judge: then he was appointed to come up to the bench, and then his patent (which was only a writ) being read, the Lord Keeper delivered it to him. But Sir William Jones (the senior puisne judge) said, the patent ought to have been read before he came up to the bench."[1]

In quiet times, Lord Chief Justice Brampston would have been respected as an excellent judge. He was above all suspicion of bribery, and his decisions in private causes were sound as well as upright. But, unhappily, he by no means disappointed the expectations of the Government.

His opinion respecting the legality of Ship-money.

Soon after his elevation, he was instructed to take the opinion privately of all the Judges on the two celebrated questions—

"1. Whether, in cases of danger to the good and safety of

1. Cro. Car. 403. These forms are no longer used. The Chief Justice is now sworn in privately before the Chancellor; and without any speechifying he enters the court and takes his place on the bench with the other judges. But in Scotland they still subject the new judge to *trials* of his sufficiency: while these are going on he is called Lord Probationer; and he might undoubtedly be *plucked* if the Court should think fit.

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the kingdom, the King may not impose Ship-money for its defence and safeguard, and by law compel payment from those who refuse? 2. Whether the King be not the sole judge both of the danger and when and how it is to be prevented?"

He is deceived as to the use to be made of this opinion.

There is reason to think that he himself was taken in by the craft of Lord Keeper Coventry, who represented that the opinion of the twelve Judges was wanted merely for the King's private satisfaction, and that no other use would be made of it. At a meeting of all the Judges in Sergeants' Inn Hall, Lord Chief Justice Brampston produced an answer to both questions in the affirmative, signed by himself. Nine other Judges, without any hesitation, signed it after him; but two, Croke and Hutton, declared that they thought the King of England never had such a power, and that, if he ever had, it was taken away by the act *De Tallagio non concedendo*,[1] the PETITION OF RIGHT, and other statutes: but they were induced to sign the paper, upon a representation that their signature was a mere formality.

The unscrupulous Lord Keeper, having got the paper into his possession, immediately published it to the world as the unanimous and solemn decision of all the Judges of England; and payment of Ship-money was refused by JOHN HAMPDEN[2] alone.

1. De Tallagio non concedendo (1297) is the name given to the Latin form of the great statute known as the *Confirmatio Cartarum*, which forbade (1) any talliage or aid to be taken by the King without the consent of the bishops, earls, barons, knights, and other freemen of the realm; (2) any prize in corn, leather, or wool, etc., without the owner's consent; (3) the *maltote*, or "evil tax," the term generally applied to the unjust tax upon wool levied by Edward I., and other kings.—*Low and Pulling's Dict. of Eng. Hist.*

2. John Hampden (*b.* 1594, *d.* 1643) was the son of John Hampden, of Great Hampden, Bucks, and Elizabeth Cromwell, aunt of Oliver Cromwell. He was born in London, educated at Thame School, and at Magdalen College, Oxford, and entered the Inner Temple in 1613. In the parliament of 1620 he represented Grampound; in 1626, Wendover; in 1640, Buckinghamshire. In 1627 he was imprisoned for refusing to pay

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Hampden's Case.

His refusal brought on the grand trial, in the Exchequer Chamber, upon the validity of the imposition. Lord Chief Justice Brampston, in a very long judgment, adhered to the opinion he had before given for the legality of the tax, although he characteristically expressed doubt as to the regularity of the proceeding on technical grounds. Croke and Hutton manfully insisted that the tax was illegal; but, all the other Judges being in favor of the Crown, Hampden was ordered to pay his 20*s*.[1]

A.D. 1638. Lord Say's Case.

Soon after, the same point arose in the Court of King's Bench in the case of the Lord Say,[2] who, envy-

the forced loan. When the second writ of Ship-money was issued, by which that tax was extended to the inland counties, he refused to pay it. The case was tried in respect of twenty shillings due from lands in the parish of Stoke Mandeville, and out of the twelve judges seven decided for the Crown, two for Hampden on technical grounds, and three for him on all counts, 1638. This trial made Hampden "the argument of all tongues, every man inquiring who and what he was that he durst of his own charge support the liberty and property of the kingdom, and rescue his country from being made a prey to the Court." When a parliament was again summoned "the eyes of all men were fixed upon him as the pilot which must steer the vessel through the tempest and rocks which threatened it." In the Long Parliament he played an important part, generally moderating by his influence the pressure of the popular party. Thus he urged the Commons to proceed against Strafford by impeachment rather than by bill of attainder, and attempted to arrange a compromise on the Church question. The King's attempt to arrest the Five Members obliged him to alter his policy and urge stronger measures. He was appointed a member of the Committee of Safety, and raised a regiment whose flag bore the significant motto, "Vestigia nulla retrorsum." He distinguished himself by his activity in the first weeks of the war, seizing the King's Commissioners of Array, occupying Oxford, and defeating the Cavaliers in many small skirmishes. He arrived too late to fight at Edgehill, but both after that battle and after the battle of Brentford urged vigorous measures on Essex, and in the Committee of Safety argued for a march direct on Oxford. After the capture of Reading in 1643, he again counselled in vain a direct attack on the King's headquarters. On June 18, 1643, at Chalgrove Field, in endeavoring to prevent the retreat of a body of cavalry which had made a sally from Oxford, he was mortally wounded, and died six days later.—*Low and Pulling's Dict. of Eng. Hist.*

1. 3 St. Tr. 826–1283.

2. William Fiennes, Viscount Say (*b.* 1585, *d.* 1662), educated at Winchester and at New College, Oxford, succeeded his father as Lord Say in

JOHN HAMPDEN.

From a Portrait at Port Eliot.

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ing the glory which Hampden had acquired, allowed his oxen to be taken as a distress for the Ship-money assessed upon him, and brought an action of trespass for taking them. But Banks,[1] the Attorney General, moved that counsel might not be permitted to argue against what had been decided in the Exchequer Chamber; and Lord Chief Justice Brampston said, "Such a judgment should be allowed to stand until it were reversed in parliament, and none ought to be suffered to dispute against it."[2]

A.D. 1636. Harrison's Case.

The Crown lawyers were thrown into much perplexity by the freak of the Rev. Thomas Harrison, a country parson, who can hardly be considered a fair specimen of his order at that time, and must either have been a little deranged in his intellect, or ani-

1613, and was created Viscount in 1624. He was a strong Puritan, "for many years the oracle of those who were called Puritans in the worst sense, and steered all their counsels and designs" (Clarendon). He was one of the founders of the colony of Connecticut, and thought of emigrating himself. He was also one of the foremost opponents of Ship-money, but the Government preferred to try Hampden's case rather than his. In 1639 he was committed to custody for refusing to take the military oath against the Scots required by the King. He was appointed in May, 1641, Master of the Court of Wards, when the King thought of winning the popular leaders by preferment, but remained firm, voted for the exclusion of the bishops, became a member of the Committee of Safety, and raised a regiment of foot for the Parliament. He continued to sit in the House of Lords until its abolition. In 1648 he acted as one of the Parliamentary commissioners at the Treaty of Newport, and voted in favor of an accommodation with the King. Cromwell appointed him to sit in his House of Lords, but he refused to accept the offer. In 1660 he took part in the intrigues to bring about the Restoration, and was rewarded by being made Lord Privy Seal. His contemporaries charged him with duplicity, and nicknamed him "Old Subtlety."—*Low and Pulling's Dict. of Eng. Hist.*

1. Sir John Bankes was born in 1589, at Keswick, in Cumberland, and educated at Queen's College, Oxford, from whence he removed to Gray's Inn, and in due course was called to the bar. In 1634 he was made Attorney General, and in 1640 Chief Justice of the Common Pleas. He displayed his loyalty and courage at the beginning of the Rebellion; and his lady defended Corfe Castle, in the Isle of Purbeck—the family seat—against the Parliament forces till it was relieved by the Earl of Carnarvon. Sir John continued with the King at Oxford, and died there, Dec. 28, 1644.—*Cooper's Biog. Dict.*

2. Cro. Car. 524.

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mated by an extraordinary eagerness for ecclesiastical promotion. Having heard that Mr. Justice Hutton, while on the circuit, had expressed an opinion unfavorable to Ship-money, he followed him to London, and, while this reverend sage of the law was seated, with his brethren, on the bench of the Court of Common Pleas, and Westminster Hall was crowded with lawyers, suitors, and idlers, marched up to him, and, making proclamation "*Oyez! Oyez! Oyez!*" said with a loud voice, "Mr. Justice Hutton! you have denied the King's supremacy, and I hereby charge you with being guilty of high treason." The Attorney General, however much he might secretly honor such an ebullition of loyalty, was obliged to treat it as an outrage, and an *ex-officio* information was filed against the delinquent for the insult he had offered to the administration of justice. At the trial the reverend defendant confessed the speaking of the words, and gloried in what he had done; saying—

The defendant's speech at his trial.

"I confess that judges are to be honored and revered as sacred persons so long as they do their duty; but having taken the oath of supremacy many times, I am bound to maintain it, and when it is assailed, as by the denying of Ship-money, it is time for every loyal subject to strike in." *Brampston, C. J.:* "The denying of Ship-money may be, and I think is, very wrong; but is it against the King's supremacy?" *Harrison:* "As a loyal subject, I did labor the defence of his Majesty, and how can I be guilty of a crime? I say, again, that Mr. Justice Hutton has committed treason, for upon his charge the people of the country do now deny Ship-money. His offence being openly committed, I conceived it not amiss to make an open accusation. The King will not give his judges leave to speak treason, nor have they power to make or pronounce laws against his prerogative. We are not to question the King's actions; they are only between God and his own conscience. 'Sufficit Regi, quod Deus est.'[1] This

1. "God is sufficient for the King."

thesis I will stand to—that whatsoever the King in his conscience thinketh he may require, we ought to yield." CHAP. XI.

The defendant having been allowed to go on in this strain for a long time, laying down doctrines new in courts of justice, although, in those days, often heard from the pulpit, the Chief Justice at last interposed, and said—

"Mr. Harrison, if you have anything to say in your own defence, proceed; but this raving must not be suffered. Do you not think that the King may govern his people by law?" *Harrison:* "Yes, and by something else too. If I have offended his Majesty in this, I do submit to his Majesty, and crave his pardon." *Brampston, C. J.:* "Your 'If' will be very ill taken by his Majesty; nor can this be considered a submission."

His sentence, and the damages recovered by Hutton.

The defendant, being found guilty, was ordered to pay a fine to the King of 5,000*l.*, and to be imprisoned, —without prejudice to the remedy of Mr. Justice Hutton by action. Such an action was accordingly brought, and, so popular was Mr. Justice Hutton, that he recovered 10,000*l.* damages; whereas it was said that, if the Chief Justice had been the plaintiff in an action for defamation, he need not have expected more than *a Norfolk groat.*[1]

Lord Chief Justice Brampston's services were likewise required in the Star Chamber. He there zealously assisted Archbishop Laud in persecuting Williams, Bishop of Lincoln, ex-Keeper of the Great Seal. When sentence was to be passed on this unfortunate prelate, ostensibly for tampering with the witnesses who were to give evidence against him on a former accusation which had been abandoned as untenable, but in reality for opposing Laud's popish A.D. 1637.

1. Cro. Car. 503; Hutt. 131; 3 St. Tr. 1370.

The silver groat once current in England (introduced by Henry III.) was equal to four pence.—*Chambers' Encyc.*, vol. v. p. 113.

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innovations in religious ceremonies, Brampston declaimed bitterly against the right reverend defendant, saying—

Brampston's judgment on the Bishop of Lincoln.

"I find my Lord Bishop of Lincoln much to blame in persuading, threatening, and directing of witnesses;—a foul fault in any, but in him most gross who hath *curam animarum*[1] throughout all his diocese. To destroy men's souls is most odious, and to be severely punished. I do hold him not fit to have the cure of souls, and therefore I do censure him to be suspended *tam ab Officio quam a Beneficio*,[2] to pay a fine of 10,000*l.*, and to be imprisoned during the King's pleasure."[3]

A.D. 1639.

This sentence, although rigorously executed, did not satiate the vengeance of the Archbishop; and the Bishop, while lying a prisoner in the Tower, having received some letters from one of the masters of Westminster School, using disrespectful language towards the Archbishop, and calling him "a little great man," a new information was filed against the Bishop for not having disclosed these letters to a magistrate, that the writer might have been immediately brought to justice. Of course he was found *guilty;* and, when the deliberation arose about the punishment, thus spoke Lord Chief Justice Brampston:

"The concealing of the libel doth by no means clear my Lord Bishop of Lincoln, for there is a difference between a letter which concerns a private person and a public officer. If a libellous letter concern a private person, he that receives it may conceal it in his pocket or burn it; but if it concern a public person, he ought to reveal it to some public officer or magistrate. Why should my Lord of Lincoln keep these letters by him, but to the end to publish them, and to have them at all times in readiness to be published? I agree in the proposed sentence, that, in addition to a fine of 5,000*l.* to the King, he do pay a fine of 3,000*l.* to the Archbishop, seeing the offence is against so honorable a person, and there is not

1. "The cure of souls."
2. "From his office as well as from his benefice."
3. 3 St. Tr. 787.

the least cause of any grievance or wrong that he hath done to my Lord of Lincoln. For his being degraded, I leave it to those of the Ecclesiastical Court to whom it doth belong. As to the pillory, I am very sorry and unwilling to give such a sentence upon any man of his calling and degree. But when I consider the quality of the person, and how much it doth aggravate the offence, I cannot tell how to spare him; for the considerations that should mitigate the punishment add to the enormity of the offence." [1]

Proposal by Chief Justice Brampston to set a bishop in the pillory.

As no clerical crime had been committed for which degradation could be inflicted, and as it was thought not altogether decent that a bishop, wearing his lawn sleeves, his rochet, and his mitre, should stand on the pillory, to be pelted with brickbats and rotten eggs, the Lord Chief Justice was overruled respecting this last suggestion, and the sentence was limited to the two fines, with perpetual imprisonment. The defendant was kept in durance under it till the meeting of the Long Parliament, when he was liberated; and, becoming an Archbishop, he saw his persecutor take his place in the Tower, while he himself was placed at the head of the Church of England.[2]

A.D. 1641. Brampston impeached by the Long Parliament.

Now came the time when Lord Chief Justice Brampston himself was to tremble. The first grievance taken up was Ship-money, and both Houses resolved that the tax was illegal, and that the judgment against Hampden for refusing to pay it ought to be set aside. Brampston was much alarmed when he saw Strafford and Laud arrested on a charge of high treason and Lord Keeper Finch obliged to fly beyond the seas.

He is leniently dealt with.

The next impeachment voted was against Brampston himself and five of his brethren, but they were more leniently dealt with, for they were only charged with "high crimes and misdemeanors;" and, happen-

1. 3 St. Tr. 814.
2. See Lives of Chancellors, vol. ii. ch. lix.

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ing to be in the House of Lords when Mr. Waller brought up the impeachment, it was ordered "that the said Judges for the present should enter into recognizances of 10,000*l.* each to abide the censure of Parliament." This being done, they enjoyed their liberty, and continued in the exercise of their judicial functions; but Mr. Justice Berkeley, who had made himself particularly obnoxious by his indiscreet invectives against the Puritans, was arrested while sitting on his tribunal in Westminster Hall, and committed a close prisoner to Newgate.[1]

Chief Justice Brampston tried to mitigate the indignation of the dominant powers by giving judgment in the case of *Chambers* v. *Sir Edward Brunfield, Mayor of London*, against the legality of Ship-money. To an action of trespass and false imprisonment, the defendant justified by his plea under "a writ for not paying of money assessed upon the plaintiff towards the finding of a ship." There was a demurrer to the plea, so that the legality of the writ came directly in issue. The counsel for the defendant rose to cite Hampden's case and Lord Say's case, in which all their Lordships had concurred, as being decisive in his favor; but Brampston, C. J, said,—

> "We cannot now hear this case argued. It hath been voted and resolved in the Upper House of Parliament and in the House of Commons, *nullo contradicente*, that the said writ, and what was done by color thereof, was illegal. Therefore, without further dispute thereof, the Court gives judgment for the plaintiff."[2]

July, 1641. The Commons pleased with his submissive conduct.

The Commons were much pleased with this submissive conduct, but *pro formâ* they exhibited articles of impeachment against the Chief Justice. To the article founded on Ship-money he answered, "that at

1. 2 Parl. Hist. 700.
2. Cro. Car. 601.

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the conference of the Judges he had given it as his opinion that the King could only impose the charge in case of necessity, and only during the continuance of that necessity." [1]

His impeachment is allowed to drop.

The impeachment was allowed to drop; and the Chief Justice seems to have coquetted a good deal with the parliamentary leaders, for, after the King had taken the field, he continued to sit in his court at Westminster, and to act as an attendant to the small number of peers who assembled there, constituting the House of Lords.

He is summoned to the headquarters of Charles I.

But when a battle was expected, Charles, being told that the Chief Justice of England was Chief Coroner, and, by virtue of his office, on view of the body of a rebel slain in battle, had authority to pronounce judgment of attainder upon him, so as to work corruption of blood and forfeiture of lands and goods, thought it would be very convenient to have such an officer in the camp, and summoned Lord Chief Justice Brampston to appear at headquarters in Yorkshire. The Lords were asked to give him leave of absence, to obey the King's summons, but they commanded him to attend them day by day at his peril. He therefore

1. His son, the Autobiographer, to prove the truth of this allegation, relates the following anecdote: "I beinge with my Lord Cheife Justice Bramston at Mr. Justice Crooke's chambers in Serjeants' Inn, my Lord Chief Justice spake to Mr. Justice Crooke to this effect: 'Brother Crooke, you know what opinion I delivered upon consideration with the other Judges upon the question sent unto us concerninge ship monie; you are old, and if it should please God to call you, I would be glade that it might be knowne what my opinion was, and how I caried myselfe in it; therefore, I pray tell it to our brother Phesant,'—if Mr. Justice Crooke should die. Whereunto Mr. Justice Crooke answered: 'That he did well remember that my Lord Bramston did declare his opinion to bee, that the Kinge could impose that charge, but only in case of necessitie, and only duringe the continuance of that necessitie; and that my Lord Bramston refused to subscribe unto the question otherwise, but was overruled by the more voices, whereupon he did subscribe.'"—p. 79. But I believe this to be a pious invention, and, if it were true, would only show the Chief Justice to have acted in a very cunning and sneaking manner.

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Oct. 10, 1642. Refusing to go, he is dismissed.

sent his two sons to make his excuse to the King. His Majesty was highly incensed by his asking leave of the Lords; and,—considering another apology that he made, about the infirmity of his health and the difficulty of travelling in the disturbed state of the country, a mere pretence,—by a *supersedeas* under the Great Seal, dismissed him from his office, and immediately appointed SIR ROBERT HEATH to be Chief Justice of England in his stead. In a few days after, the ex-Chief Justice received the following handsome letter from his successor:

"My Lord (for soe you shall ever be to me), when you shall truely understand the passages of things you will know that I have binn farr from supplantinge you, whome I did truely love and honor, and that I have binn and will be your servant; and I believe you know that the Kinge hath ingaged himselfe to be mindfull of you, and I assure you, at my humble suite, he hath given me leave to be his remembrancer, which I will not neglect: in the mean tyme I am and ever will be your very true servant

"ROBERT HEATH."

He is in favor with the parliamentary leaders.

Brampston must now have given in his full adhesion to the parliamentary party, for in such favor was he with them that, when the treaty of Uxbridge[1] was proceeding, they made it one of their conditions that he should be reappointed Lord Chief Justice of the Court of King's Bench; although the Autobiographer stoutly denies that his father ever temporized, and says

1. The Treaty of Uxbridge (Jan. and Feb., 1645) is the name given to the futile attempts at an understanding made between the commissioners of the King and the Parliament at the beginning of 1645. But it was soon evident that the demands of the Parliamentarian party were too exorbitant to be granted, for they demanded not only the abolition of episcopacy, but also the establishment of the Directory instead of the Book of Common Prayer. To these requirements they added the command of the Army and Navy, and the renewal of hostilities in Ireland. The King was by no means prepared to go such lengths, and after some three weeks had been wasted, it was once more seen that the final appeal would have to be made to the sword.—*Low and Pulling's Dict. of Eng. Hist.*

that this proposal only shows that "they had a better opinion of him than he had of them or their cause."[1] From the same source we have the following further statement, which must be taken with some grains of allowance: CHAP. XI.

"After that, they would have brought him into the House of Lords as an assistant, *which he did not absolutely denie*, but avoided attending by the help of freinds. They had thoughts of makeing him theire keeper of theire seale; and the Commons passed some vote for it in March, 1646, which was to A.D. 1646. be communicated to the Lords. My father went to London and prevented it by his freinds in the Lords' House. And thus he escaped ruine; for had he been put to refuse (as accept he would not) any imployment, he must inevitably have binn undone. At length Crumwell toke upon him the Protectorship; he sent his Secretary Thurlow to him, and to bringe him to the Cockpitt at Whitehall, where he treated him with great respect, and urged him to take the office of Cheife Justice again; but he excused himselfe as being old, and, havinge made tryall, could not satisfie; therefore he must now medle noe more with publique matters. Crumwell brought him down stayers, sayinge he would take no deniall, and wished him to advise with his brother Rolle, whoe was his freind and an honest man. And I know Rolle came to my father and protested he would be banished rather then be a judge: when, contrary to these words, he was first a Puisne Judge, and afterwards Cheife Justice of the Bench, which they called the Upper Bench."[2]

I will not say that he would have been willing to resume his office, with the title of "Chief Justice of the Upper Bench of His Highness Oliver, the Lord Protector," if Rolle had not outwitted him, and got it for himself; but it is quite clear that he conformed very submissively to the republican *régime*.

After Rolle's appointment Brampston withdrew entirely from public life, and spent the remainder of his days at his country-house in Essex. There he A.D. 1654. His death.

1. Page 88.
2. Pp. 88, 89.

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expired, on the 2d of September, 1654, in the 78th year of his age. If courage and principle had been added to his very considerable talents and acquirements, he might have gained a great name in the national struggle which he witnessed; but, from his vacillation, he fell into contempt with both parties, and, although free from the imputation of serious crimes, there is no respect entertained for his memory.

However, the following lines, to be read on his monument in the church of Roxwell in Essex, represent him as very faultless, and very sanguine as to the result of his own trial at the GRAND ASSIZE:

His epitaph.

"AMBITIONE, IRA, DONOQUE POTENTIOR OM
QUI JUDEX ALIIS LEX FUIT IPSE SIBI;
QUI TANTO OBSCURAS PENETRAVIT LUMINE CAUSAS
UT CONVICTA SIMUL PARS QUOQUE VICTA FORET;
MAXIMUS INTERPRES, CULTOR SANCTISSIMUS ÆQUI,
HIC JACET, HEU, TALES MORS NIMIS ÆQUA RAPIT!
HIC ALACRI EXPECTAT SUPREMUM MENTE TRIBUNAL,
NEC METUIT JUDEX JUDICIS ORA SUI."

His descendants.

One of his sons, the Autobiographer, was made a Knight of the Bath by Charles II., and the other a Baron of the Exchequer. His possessions are inherited by his lineal heir, Thomas William Brampston, Esq., now one of the representatives for his native county; a distinction which has been conferred upon the family in fifteen parliaments since the death of the Chief Justice.[1]

Sir Robert Heath.

We must now attend to Sir Robert Heath, who was the last Chief Justice of Charles I., and was appointed by him to pass judgment, not on the living, but on the dead. If we cannot defend all his proceedings, we must allow him the merit—which successful

1. See Clar. Hist. Reb. ii. 32, 179; Peck's Des. Cur. lib. xiv. p. 27; Whit. Mem. p. 245; Sir John Brampston's Autobiography, published in 1845 by the Camden Society,—very ably edited by Lord Braybrooke, the resident.

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members of our profession can so seldom claim—of perfect consistency; for he started as a high prerogative lawyer, and a high prerogative lawyer he continued to the day of his death.

His education.

He was of a respectable family of small fortune, in Kent, and was born at Etonbridge in that county. He received his early education at Tonbridge School, and was sent from thence to St. John's College, Cambridge. His course of study there is not known; but when he was transferred to the Inner Temple, we are told that he read law and history with the preconceived conviction that the King of England was an absolute sovereign, and so enthusiastic was he that he converted all he met with into arguments to support his theory. One most convenient doctrine solved many difficulties which otherwise would have perplexed him: he maintained that Parliament had no power to curtail the essential prerogatives of the Crown, and that all acts of parliament for such a purpose were *ultra vires* and void. There is no absurdity in this doctrine, for a legislative assembly may have only a limited power,—like the Congress of the United States of America; and it was by no means so startling then as now, when the *omnipotence of parliament* has passed into a maxim. He had no respect whatever for the House of Commons or any of its privileges, being of opinion that it had been called into existence by the Crown only to assist in raising the revenue, and that, if it refused necessary supplies, the King, as PATER PATRIÆ, must provide for the defence of the realm in the same manner as before it had existence. He himself several times refused a seat in that assembly, which he said was "only fit for a pitiful Puritan or a pretending patriot;" and he expressed a resolution to get on in his profession without beginning, as many of his brethren did, by herding with the seditious, and trying to undermine

His consistency as a supporter of absolute prerogative.

He refuses to sit in the House of Commons.

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the powers which for the public good the Crown had immemorially exercised and inalienably possessed. To enable him to defend these with proper skill and effect, he was constantly perusing the old records, and, from the Conquest downwards, they were as familiar to him as the cases in the last number of the periodical Reports are to a modern practitioner. Upon all questions of prerogative law which could arise he was complete master of all the authorities to be cited for the Crown, and of the answers to be given to all that could be cited against him.

His reputation as a "Reader."

As he would neither go into parliament nor make a splash in Westminster Hall in the "sedition line," his friends were apprehensive that his great acquirements as a lawyer never would be known; but it happened that, in the year 1619, he was appointed "Reader" for the Inner Temple, and he delivered a series of lectures, explaining his views on constitutional subjects, which for ever established his reputation.

Jan. 22, 1621. He is made Solicitor General.

On the first vacancy which afterwards occurred in the office of Solicitor General he was appointed to fill it; and Sir Thomas Coventry, the Attorney General, expressed high satisfaction at having him for a colleague. Very important proceedings soon after followed, upon the impeachment of Lord Bacon and the punishment of the monopolists, but as these were all in parliament he made no conspicuous figure during the remainder of the reign of James I.

Oct. 31, 1625.

Soon after the commencement of the reign of Charles I. he was promoted to the office of Attorney General; and then, upon various important occasions, he delivered arguments in support of the unlimited power of the Crown to imprison and to impose taxes, which cannot now be read without admiration of the learning and ingenuity which they display.

The first of these was when Sir Thomas Darnel and

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His argument in favor of the King's power to imprison without stating the cause.

his patriotic associates were brought by *habeas corpus* before the Court of King's Bench, having been committed in reality for refusing to contribute to the forced loan, but upon a warrant by the King and Council which did not specify any offence. I have already mentioned the speeches of their counsel. "To these pleadings for liberty," says Hallam, "Heath, the Attorney General, replied in a speech of considerable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the Judges that they were placed there to obey rather than to determine." [1]

"This commitment," he said, "is not in a legal and ordinary way, but by the special command of our Lord the King, which implies not only the fact done, but so extraordinarily done, that it is notoriously his Majesty's immediate act, and he wills that it should be so. Shall we make inquiries whether his commands are lawful?—who shall call in question the justice of the King's actions? Is he to be called upon to give an account of them?"

He cites precedents in confirmation of that power.

After arguing very confidently on the legal maxim that "the King can do no wrong," the constitutional interpretation of which had not yet been settled, he goes on to show how *de facto* the power of imprisonment had recently been exercised by the detention in custody, for years, of popish and other state prisoners, without any question or doubt being raised. "Some," he observed, "there are in the Tower who were put in it when very young: should they bring a *habeas corpus*, would the Court deliver them?" He then dwelt at great length upon the resolution of the Judges in the 34th of Elizabeth in favor of a general commitment by the King; and went over all the precedents and statutes cited on the other side, contending that they were either inapplicable or contrary to law.

1. Const. Hist. i. 527.

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He carried the Court with him, and the prisoners were remanded without any considerable public scandal being then created.[1]

He is heard against the "Petition of Right."

During the stormy session in which the "Petition of Right" was passed, Heath, not being a member of the House of Commons, had very little trouble; but once, while it was pending, he was heard against it as counsel for the King before a joint committee of Lords and Commons. Upon this occasion he occupied two whole days in pouring forth his learning to prove that the proposed measure was an infringement of the ancient, essential, and inalienable prerogatives of the Crown.[2] He was patiently listened to, but he made no impression on Lords or Commons; and the King, after receiving an assurance from the Judges that they would effectually do away with the statute when it came before them for interpretation, was obliged to go through the form of giving the royal assent to it.

A.D. 1629. He prosecutes Sir John Eliot and others for what they had said and done in the House of Commons.

As soon as the parliament was dissolved, Heath was called into full activity; and he now carried every thing his own way, for the extent of the royal prerogative was to be declared by the Court of King's Bench and the Star Chamber. Sir John Eliot, Stroud, Selden, and the other leaders of the country party who had been the most active in carrying the "Petition of Right," were immediately thrown into prison, and, the Attorney General having assembled the Judges, they were as good as their word, by declaring that they had cognizance of all that happened in parliament, and that they had a right to punish whatsoever was done there by parliament men in an unparliamentary manner.[3]

The imprisoned patriots having sued out writs of *habeas corpus*, it appeared that they were detained under warrants signed by the King, "for notable con-

1. 3 St. Tr. 1–234. 2. 3 St. Tr. 133.
3. 3 St. Tr. 237.

SIR JOHN ELIOT.

After a Picture at Port Eliot.

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tempts committed against ourself and our government, and for stirring up sedition against us." Their counsel argued that a commitment by the King is invalid, as he must act by responsible officers; and that warrants in this general form were in direct violation of the "Petition of Right," so recently become law. But Heath still boldly argued for the unimpaired power of arbitrary imprisonment, pretending that the "Petition of Right" was not a binding statute. "A petition in parliament," said he, "is no law, yet it is for the honor and dignity of the King to observe it faithfully; but it is the duty of the people not to stretch it beyond the words and intention of the King, and no other construction can be made of the 'Petition' than that it is a confirmation of the ancient rights and liberties of the subject. So that now the case remains in the same quality and degree as it was before the 'Petition.'" He proceeded to turn into ridicule the whole proceedings of the late parliament, and he again went over the bead-roll of his precedents to prove that one committed by command of the King or Privy Council is not bailable. The prisoners were remanded to custody.

He pretends that the "Petition of Right" is not a binding statute.

In answer to the *informations*, it was pleaded that a court of common law had no jurisdiction to take cognizance of speeches made in the House of Commons; that the Judges had often declared themselves incompetent to give an opinion upon such subjects; that the words imputed to Sir John Eliot were an accusation against the ministers of the Crown, which the representatives of the people had a right to prefer; that no one would venture to complain of grievances in parliament if he should be subjected to punishment at the discretion of an inferior tribunal; that the alleged precedents were mere acts of power which no attempt had hitherto been made to sanction; and that although part of the supposed offences had occurred immedi-

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ately before the dissolution, so that they could not have been punished by the last parliament, they might be punished in a future parliament. But,—

His argument against parliamentary privileges.

"*Heath, A. G.*, replied that the King was not bound to wait for another parliament; and, moreover, that the House of Commons was not a court of justice, nor had any power to proceed criminally, except by imprisoning its own members. He admitted that the judges had sometimes declined to give their judgment upon matter of privilege; but contended that such cases had happened during the session of parliament, and that it did not follow that an offence committed in the House might not be questioned after a dissolution."

The Judges unanimously held, that, although the alleged offences had been committed in parliament, the defendants were bound to answer in the Court of King's Bench, in which all offences against the Crown were cognizable. The parties refusing to put in any other plea, they were convicted, and, the Attorney General praying judgment, they were sentenced to pay heavy fines, and to be imprisoned during the King's pleasure.[1]

He advises the King to impose a new tax on cards.

Heath remained Attorney General two years longer. The only difficulty which the Government now had was to raise money without calling a parliament; and he did his best to surmount it. By his advice a new tax was laid on cards, and all who refused to pay it he mercilessly prosecuted in the Court of Exchequer, where his will was law. All monopolies had been put down at the conclusion of the last reign, with the exception of new inventions. Under pretence of some novelty, he granted patents, vesting in particular individuals or companies the exclusive right of dealing in soap, leather, salt, linen rags, and various other commodities, although, of 200,000*l.* thereby levied on the people, scarcely 1,500*l.* came into the

1. 3 St. Tr. 235–335; 2 Hall. Const. Hist. 3–7.

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royal coffers. His grand expedient was to compel all who had a landed estate of 40*l.* a year to submit to knighthood, and to pay a heavy fee; or, on refusal, to pay a heavy fine. This caused a tremendous outcry, and was at first resisted; but the question being brought before the Court of Exchequer, he delivered an argument in support of the claim, in which he traced knighthood from the ancient Germans down to the reigns of the Stuarts, showing that the prince had always the right of conferring it upon all who held of him *in capite*[1]—receiving a reasonable compliment in return. In this instance, Mr. Attorney not only had the decision of the Court, but the law, on his side.[2] Blackstone says, "The prerogative of compelling the king's vassals to be knighted, or to pay a fine, was expressly recognized in parliament by the statute de Militibus, 1 Ed. II.,—but yet was the occasion of heavy murmurs when exerted by Charles I., among whose many misfortunes it was, that neither himself nor his people seemed able to distinguish between the arbitrary stretch and the legal exertion of prerogative."[3]

His scheme to raise money by compelling people to be knighted.

All these expedients for filling the Exchequer proving unproductive, the last hopes of despotism rested upon Noy, who, having been a patriot, was eager to be the slave of the Court, and proposed his Ship-money. If this should be supported by the Judges, and endured by the people, parliaments for ever after would have been unnecessary. Heath was willing enough to defend it; but the inventor was unwilling to share the glory or the profit of it with another. Luckily, at that very time, a vacancy occurred in the office of Chief Justice of the Common Pleas; and there being

These expedients unproductive.

1. "In chief."

2. The case is not in print, but I have a very full MS. report of it.

3. 2 Bl. Com. 69. Compulsory knighthood was abolished by the Long Parliament, 16 Car. I. c. 20.

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an extreme eagerness to get rid of Heath notwithstanding his very zealous services to the Crown, he was "put upon the cushion," and Noy succeeded him as Attorney General.

Heath is made Chief Justice of the Common Pleas.

To qualify him to be a Judge, it was necessary that he should first become a Sergeant; and, according to ancient custom, he distributed rings, choosing a motto which indicated his intention still to put the King above the law,—"Lex Regis, vis Legis."[1] "On the 25th of October, 1631, he came in his party-colored robes to the Common Pleas, and performed his ceremonies as Sergeant, and the same day kept his feast in Sergeants' Inn;[2] and afterwards, on the 27th of October, he was sworn in Chief Justice."[3]

Oct. 27, 1631.

In the four years during which he held this office, no case of public interest occurred in his own court; but he took an active part in the Star Chamber, and, having prosecuted the Recorder of Salisbury for breaking a painted window without the bishop's consent, he now sentenced him for the offence.[4] The grand scheme of Ship-money, which had been long in preparation, was ready to be brought forward, when, to the astonishment of the world, Heath was removed from his office. It has been said that the Government was afraid of his opinion of Ship-money, and wished to prefer Finch—the most profligate of men—on whom they could entirely rely. The truth seems to be, that

Sept. 14, 1634. He is dismissed for bribery.

1. "The law of the King, the power of the Law."

2. On the right of Chancery Lane, behind St. Dunstan's Church, are the dark brick courts of *Sergeants' Inn*, originally intended only for judges and the sergeants-at-law who derive their name from the *Fratres Servientes* of the Knights Templars. The sergeants still address each other as brothers. The degree of Sergeant is the highest attainable in the faculty of law, and indispensable for a seat on the judicial bench. The buildings were sold in 1877, and the little Hall (38 ft. by 21) and Chapel (31 ft. by 20)—both with richly stained windows—will probably erelong be pulled down.—*Hare's Walks in London*, vol. i. p. 79.

3. Cro. Car. 225.

4. St. Tr. 541; Cro. Car. 375; Sir W. Jones' Rep. 350.

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he continued to enjoy the favor and confidence of the Government, but that a charge had been brought against him of taking bribes, which was so strongly supported by evidence that it could not be overlooked, although no parliament was sitting, or ever likely to sit; and that the most discreet proceeding, even for himself, was to remove him quietly from his office. The removal of judges had, under the Stuarts, become so common, that no great sensation was created by a new instance of it, and people merely supposed that some secret displeasure had been given to the King.

It happened at the same time that Banks was made Attorney General on the death of Noy, and the following pasquinade was stuck upon the gate of Westminster Hall:

"*Noy's* flood is gone,
The *Banks* appear,
Heath is shorn down,
And *Finch* sings there."

He returns to practice at the bar.

Heath presented a petition to the King, setting forth his services as Attorney General in supporting the royal right to imprison and to tax the subject, as well as the good-will he had manifested while he sat on the Bench; and expressing a hope that, as he had been severely punished for his fault, he might not be utterly ruined, but might be permitted to practise at the bar. To this the King, by advice of the Privy Council, consented, on condition that he should be put at the bottom of the list of Sergeants, and should not plead against the Crown in the Star Chamber.[1]

Accordingly, he took his place at the bar of the Court of Common Pleas, as junior, where he had presided as chief; and speedily got into considerable business. How he quoted his own decisions when Chief Justice, or treated them when quoted against him, we are not told. He very soon again insinuated himself

1. Cro. Car. 375.

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into the favor of the Government, and assisted Sir John Banks, the Attorney General, in state prosecutions. He first addressed the jury for the Crown in the famous case of Thomas Harrison, indicted for insulting Mr. Justice Hutton in open court; leaving the Attorney General to sum up the evidence.

Jan. 1641. He is made a Puisne Judge of the King's Bench.

Not having been on the bench when the Judges gave the extrajudicial opinion in favor of Ship-money, nor when Hampden's trial came on, he escaped impeachment at the meeting of the Long Parliament; and, on the removal of those who were impeached, he was made a Puisne Judge of the Court of King's Bench.

A.D. 1642.

When hostilities were about to commence, he happened to be Judge of Assize at York,[1] where the King lay. He always protested that he was innocent of any plot to make himself Chief Justice of the King's Bench; yet, knowing that, from bodily infirmity and lukewarm-

1. York (Latin, *Eboracum;* Old English, *Eorforwic*) was the capital of Roman Britain, a fortress where the headquarters of the Sixth Legion, and for a time of the Ninth, were situated, and the site of an important colony. Its two rivers, the Ouse and the Foss, strengthened its walls, and the former made it an important commercial centre. Constantius Chlorus died there, and Constantine the Great was there hailed Emperor by his troops (306 A.D.). It was also the seat of one of the bishoprics of the Romano-British Church. Under the Anglian kings it preserved its position as a capital, first of Deira, afterwards of the greater kingdom of Northumbria. In 627 Paulinus baptized King Edwin in the hastily-built chapel where the cathedral afterwards rose. The organization of the English Church, effected by Theodore, made York an archbishopric, though quite dependent on Canterbury, until Archbishop Egbert vindicated its claims to metropolitan independence. In 867 it was taken by the Danes, and its recovery by Athelstan took place in 937. At the Conquest it contained about 10,000 people. It submitted to William, who built a castle there in 1068. In the civil wars the city played an important part. There, in 1642, Charles I. collected his partisans, and the surrender of York in July, 1644, sealed the fate of the north of England. Its occupation by Fairfax in January, 1660, enabled Monk to advance into England, and materially forwarded the Restoration. Like most other corporations York lost its charter in 1684, and had it restored in November, 1688. In the same month Lord Danby seized the city, then governed by Sir John Reresby, and declared for a free Parliament and the Protestant religion. At the time of the Revolution of 1688, York probably contained about 10,000 inhabitants.—*Low and Pulling's Dict. of Eng. Hist.*

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ness in the royal cause, Brampston would not come to York when summoned by the King, there is strong reason to suspect that he suggested the propriety of this summons, on the pretence that the Chief Justice of England might, as Chief Coroner, declare an attainder of rebels slain in battle,—which would subject their lands and goods to forfeiture.[1] Brampston was ordered to come to York, and, not making his appearance, he was removed from his office; and Sir Robert Heath was created Chief Justice of England, that he might attaint the slaughtered rebels. Sir John Brampston, the Autobiographer, says—"When Sir Robert Heath had that place, that opinion vanished, and nothing of that nature was ever put in practice."

Created Chief Justice of England.

A.D. 1643. Attempt to outlaw and attaint the leaders of the parliamentary party for high treason.

But in the autumn of the year 1643, the royalists having gained an ascendancy in the West of England, a scheme was formed to outlaw, for high treason, the leaders on the parliament side,—as well those who were directing military operations in the field as the non-combatants who were conducting the government at Westminster. A commission passed the Great Seal, at Oxford,[2] directed to Lord Chief Justice Heath and

1. Sir John Brampston relates a conversation on the subject, in which Mr. Hyde, afterwards Earl of Clarendon, said, "I am confident that somebody that hath design upon the place hath put the King on this."—(p. 85.)

2. Oxford is mentioned as the seat of a school or college as early as 802. It was taken by Edward the Elder in 912, and became one of the most important of the West Saxon towns. It was captured by the Danes under Sweyn in 1013, and was several times the seat of the Witenagemot under Canute. It was stormed by William the Conqueror in 1067, and the castle built about 1070. The castle was occupied by the Empress Maud in 1142, and captured by Stephen on her escape. The treaty between Henry II. and Stephen was made at Oxford (Nov. 7, 1153). In 1258 the Mad Parliament met there, and the Provisions of Oxford were drawn up. In 1542 Oxford became one of Henry VIII.'s new bishoprics. Ridley, Latimer, and Cranmer were executed here in 1555 and 1556. In the Civil War it was the headquarters of Charles I. after October, 1642. The King established his mint there in 1643, and held a Parliament in 1644. It was unsuccessfully besieged by Fairfax in May, 1645, and again besieged the following May, and taken June 24, 1646.—*Low and Pulling's Dict. of Eng. Hist.*

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three other Judges who had taken the King's side, to hold a court of oyer and terminer at Salisbury. Accordingly, they took their seats on the Bench, and swore in a grand jury, whom Heath addressed, explaining the law of high treason, showing that flagrant overt acts had been committed by conspiring the King's death and levying war against him, and proving by authorities that all who aided and assisted by furnishing supplies, or giving orders or advice to the rebels, were as guilty as those who fought against his Majesty with deadly weapons in their hands. Bills of indictment were then preferred against the Earls of Northumberland, Pembroke, and Salisbury, and divers members of the House of Commons. The grand jury, however,—probably without having read Grotius[1] and

1. Grotius, or De Groot (Hugo), an eminent Dutch jurist and theologian, and one of the most celebrated scholars of his time, was born at Delft, April 10, 1583. As a child he was remarkable for precocity of intellect, and is said to have written Latin verses when but eight years of age. He studied at Leyden under Joseph Scaliger and the theologian Junius, and devoted himself to divinity, law, and mathematics. In 1598 he accompanied a Dutch embassy to Paris, on which occasion Henry IV. presented him with a golden chain. Soon after his return, in 1599, he published editions of several classics, and wrote a Latin poem entitled "Prosopopœia," which was greatly admired and translated into French and Greek. In 1613 he obtained the important post of pensionary of Rotterdam, which gave him a seat in the Assembly of the States of Holland and in that of the States-General. Being sent to England in 1615 on some public business, he formed the acquaintance of Isaac Casaubon. In 1618 he was involved in the defeat and misfortune of the Liberal or Arminian party, of which his friend Barneveldt was the leader. He was tried for treason, and unjustly condemned to perpetual imprisonment, and his property was confiscated. In June, 1619, he was sent to the fortress of Loevestein. He here devoted himself to study, and wrote, during his captivity, several works, among which was his celebrated treatise "On the Truth of the Christian Religion" ("De Veritate Religionis Christianæ," 1627). At the end of eighteen months Grotius escaped from his prison by means of a stratagem devised by his wife, who had been permitted to share his confinement. He went immediately to France, where he was well received by Louis XIII., who granted him a pension of three thousand livres. On the death of the stadtholder Maurice, Grotius was persuaded by his friends to return to Holland in 1631, but was again compelled to leave it. In 1634 he was appointed Councillor to the Queen of Sweden by Chancellor Oxenstiern, and her ambassador to the Court of France. In 1645 he repaired to Stock-

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the writers on public law, who say that when there is a civil war in a country the opposite parties must treat each other as if they were belligerents belonging to two independent nations, but actuated by a sense of the injustice and impolicy of treating as common malefactors those who, seeking to reform abuses and vindicate the liberties of their fellow-citizens, were commanding armies and enacting laws,—returned all the bills *ignoramus*;[1] and there could neither be any trial nor process of outlawry.

This rash attempt only served to produce irritation, and to render the parliamentarians more suspicious and revengeful when negotiations were afterwards opened which might have led to a satisfactory accommodation.[2]

July, 1644. Assizes at Exeter before Chief Justice Heath.

In the summer of the following year, Chief Justice Heath held assizes at Exeter, and there actually obtained the conviction of Captain Turpine, a parlia-

holm, where he was received with the greatest favor by Queen Christina; but, soon becoming weary of Court life, he embarked for Lubeck in August. After a stormy passage, he arrived at Rostock, very ill from exposure and fatigue, and died on the 28th of August, 1645. His treatise on International Law ("De Jure Belli et Pacis"), a work of the greatest merit, has been translated into the principal European languages.—*Thomas' Biog. Dict.*

1. "We are ignorant."

2. Whitelock, 78, 181; Ordinance, 22d Nov. 1645. Lord Clarendon says that "Lord Chief Justice Heath, who was made Chief Justice for that purpose, sat to attaint the Earl of Essex, and many other persons who were in rebellion, of high treason" (vol. ii. p. 62). I do not know whether he refers to the commission at Salisbury: there is no account extant of legal proceedings instituted, then or at any other time, against the Earl of Essex.

Upon the failure of the experiment of putting the common law in force against the rebels, martial law was resorted to; but this was speedily superseded by the LEX TALIONIS. "The King's officers having caused divers of the Parliament party to be hanged for spies, as one poor man by Prince Rupert's order, upon the great elm near the Bell in Henley, and many others,—now the council of war at Essex House condemned two for spies who brought a proclamation and letters from Oxford to London, which were taken about them, and they were both hanged."—*Whitelock*, p. 78.

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mentary officer, who had been taken in arms against the King, and was produced as a prisoner at the bar. The Sheriff appears to have refused to carry the sentence into execution; but the unfortunate gentleman was hanged by Sir John Berkeley, Governor of Exeter. The Parliament, having heard of their partisan being thus put to death in cold blood, ordered that the Judges who condemned him might be impeached of high treason; but they were afterwards satisfied with passing an ordinance to remove Heath, and his brethren who had sat with him on this occasion, from their judicial offices, and to disable them from acting as judges in all time to come.[1]

He is removed by the Parliament from his office of Chief Justice.

Sir Robert Heath never ventured to take his seat as Chief Justice of the Court of King's Bench at Westminster,—but, after travelling about for some time with the King, fixed himself at Oxford, where he was made a Doctor of the Civil Law, and attended as a Judge when Charles's parliament was held there.

A.D. 1646. He is obliged to fly the country.

When Oxford was, at last, obliged to surrender, and the royalists could no longer make head in any part of England, Heath found it necessary to fly for safety to the Continent. The parliamentary leaders said that they would not have molested him if he had confined himself to the discharge of his judicial duties; or even if, like Lord Keeper Littleton and other lawyers, he had carried arms for the King; but as, contrary to the law of nations, he had proceeded against several of those who bore a commission which the Parliament had granted to them in the King's name, they were determined to make an example of him. Therefore, when an ordinance was passed, granting an indemnity to the royalists who submitted,

His death.

he was excepted from it by name.[2] After suffering

1. Whitelock, 96. Lords' Journals, Nov. 22, 24, 1645.
2. Whitelock, 345.

great privations, he died at Caen, in Normandy, in the month of August, 1649.

He had, from his professional gains, purchased a large landed estate, which was sequestrated by the Parliament, but afterwards was restored by Charles II. to his son. He had never tried to make his peace with the dominant party by any concession, and he declared that "he would rather suffer all the ills of exile than submit to the ruler of those who had first fought their sovereign in the field, and then had murdered him on the scaffold." With the exception of his bribery, which was never properly inquired into, and does not seem to have injured him much in the opinion of his contemporaries, no grievous stain is attached to his memory; and we must feel respect for the constancy with which he adhered to his political principles, although we cannot defend them.[1]

His character.

1. Wood's Fasti Ox. 45.

CHAPTER XII.

CHIEF JUSTICES OF THE UPPER BENCH DURING THE COMMONWEALTH.

CHAP. XII.

Merits and services of the republican judges.

ALL the Chief Justices whom I have hitherto commemorated held their offices under royal authority, and were supposed to represent the King in the administration of the law. I now come to a class who were appointed by the House of Commons or by the Protector, and were supposed to represent the majesty of the people of England. It is creditable to the times in which they lived, that they were men of learning and respectability. A few fanatical spirits then appeared, who were for abrogating the whole fabric of our laws, and who thought that any disputes about property which might arise would best be decided by some man of plain sense, whose mind was not perverted by attending to legal distinctions;—but the great mass of the nation, although the office of King was abolished, clung fondly to the ancient laws as their best birthright, and were desirous of seeing the Bench occupied by men of education and professional skill. For all high judicial qualities, the republican judges were superior to their predecessors and immediate successors.

Chief Justice Rolle.

Chief Justice ROLLE, with whom I begin, was regarded by his contemporaries as a man of profound learning, of great abilities, and of unspotted honor—and I hardly know any action of his life which is liable to grave objection. Not even is an apology required for him from the violence of the times in which he lived.

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His origin and early career.

He was the younger son of a respectable family in Devonshire, and was born at Heanton in that county, in the year 1589. I know nothing of his school education. He passed between two and three years at Exeter College, Oxford; but, without having taken a degree, he was removed to the Inner Temple, London. Here he studied the law with an intensity which must astonish the most diligent men in our degenerate age. He had for his companions Selden and others of the same stamp, who could hardly have been made of flesh and blood. Except a very few hours for sleep, they dedicated the whole of their time to professional improvement, reading and commonplacing every thing that had ever been printed respecting the common law of England, together with many unpublished records and MSS. which they found in the Tower and other repositories. Their only relaxation was meeting together and conversing on what they had read, "for it was the constant and almost daily course for many years together, of those great traders in learning, to bring in their acquests therein, as it were, in a common stock by natural communication, whereby each of them, in a great measure, became a participant and common possessor of each others' learning and knowledge."[1] Rolle now composed that wonderful Digest which, with additions and corrections made by him in after-life, was given to the world under the title of "Rolle's Abridgment," and which shows not only stupendous industry, but a fine analytical head for legal divisions and distinctions.

"Rolle's Abridgment."

He had become a very ripe lawyer before he was called to the bar,—instead of trusting, according to modern fashion, to the chance of picking up *pro re nata*[2] a superficial acquaintance with a particular point

1. Wood's Ath. iii. 415.
2. "For a special purpose."

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His practice confined to the King's Bench.

on getting a brief. He confined himself to practice in one court—the King's Bench; not running about, as has always been too much the fashion, to any place where he might pick up a fee. "By this means he grew master of the experience of that court, whereby his clients were never disappointed for want of his skill or attendance. He argued frequently and pertinently. His arguments were plain, short, and perspicuous; yet were they significant and weighty."[1]

M.P. for Callington. A.D. 1625.

He sat for the borough of Callington in the parliaments held in the end of the reign of James I. and the beginning of the reign of Charles I., and took the liberal side, but always with moderation. He maintained the good old maxim, that "redress of grievances should come before supply;" and to the argument that the King's wants were so urgent, he replied, that "if the necessity for money was so great, this was the very time to press for redress of grievances."[2] When the impeachment of the Duke of Buckingham was moved, he ably vindicated the jurisdiction of the House of Commons over such a case, and showed various instances in which it had been beneficially exercised.[3] During the suspension of parliaments he devoted himself to his forensic pursuits. He did not shine as a popular orator, and he does not seem to have been retained in any important political case either in the Star Chamber or courts of common law, although he continued steadily to support the sound constitutional principles with which he started.

A.D. 1638.

In 1638 he was elected "Reader" of the Inner Temple; but, on account of the prevalence of the plague, he did not deliver his lectures till the beginning of 1640. They were received with much applause, and

1. Wood's Ath. iii. 417.
2. 3 Parl. Hist. 35.
3. 3 Parl. Hist. 55.

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immediately after finishing them he was called to the degree of Sergeant-at-law.[1]

His conduct when the troubles began.

At the meeting of the Long Parliament[2] he declined a seat which, from the interest of his family, he might have had either in Devonshire or Cornwall. He had not nerve to mix in the stormy scenes which he saw were coming; yet he adhered to the Parliament, he took the covenant along with the Earl of Manchester and the Presbyterian leaders, and he conscientiously approved of the reforms introduced both into the church and the state: at the same time he was always for preserving the ancient form of government by King, Lords, and Commons, and he deeply deplored the excesses of the Roundheads.[3]

A.D. 1643.

Under these circumstances it is very creditable to the House of Commons that, merely from a sense of his fitness for the Bench, when they were negotiating terms of settlement with the King during the civil war, they stipulated that Sergeant Rolle should be

1. Dugd. Chr. Ser. iii.

2. The Long Parliament, or the fifth of Charles I., assembled November 3, 1640—"a Parliament which many, before that time, thought would never have had a beginning, and afterwards that it would never have had an end." It was, however, abruptly and violently dispersed by Cromwell, April 20, 1653. After many vicissitudes, in which fragments of this Parliament were called together again and again for special purposes, the appearance of legal dissolution was given by a bill for "Dissolving the Parliament begun and holden at Westminster 3d of November, 1640, and that the day of dissolution shall be from this day, March 16, 1659." Macaulay describes it as "that renowned Parliament which, in spite of many errors and disasters, is justly entitled to the reverence and gratitude of all who, in any part of the world, enjoy the blessings of constitutional government." On the other hand, Cobbett, in his "Parliamentary History," observes, "Thus ended the Long Parliament, which, with innumerable alterations and several intermissions, had continued the scourge of the nation for nearly twenty years."—*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.), p. 6.

3. The two parties in the civil war were distinguished as Royalists and Parliamentarians, or more familiarly as Cavaliers and Roundheads. The last name is said by some to have been given because the extreme Puritans cropped their hair short, in opposition to the prevailing fashion of wearing it long.—*Thompson's Hist. of Eng.*, p. 212.

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Oct. 23, 1645. He becomes a Judge under the Parliament.

appointed one of the Judges of the Court of King's Bench; and that afterwards, on the extinction of the royal authority, they named him to that office by their own authority.

He was much perplexed how to conduct himself in this emergency. All the forms of judicial procedure were carried on as if the King were on the throne, and the patent of the new Judge would pass under the Great Seal with the royal arms of England impressed upon it; but the awkward truth could not be disguised, that those under whom he was really to act had fought several pitched battles in the field against his Majesty, and expected very soon to make him a prisoner. The doctrines which Rolle had laid down, when he was writing the title "Prerogative del Roy," came strongly into his mind: but he persuaded himself that the Parliament had right on its side; he saw that its authority was recognized over the greatest part of England; he said to himself that "justice must be administered;" he was soothed, instead of being startled, by the thought that he was to swear allegiance to the King; and he still fostered the fond hope that a pacification would take place, and that the King, yielding to the reasonable conditions proposed to him, might soon again be quietly keeping his court at Whitehall. He submitted to be sworn in before the Lords Commissioners, and took his seat on the Bench according to ancient forms, the only innovation being that his patent ran "quamdiù se bene gesserit," instead of "durante bene placito."[1]

He continued a Puisne Judge for three years, during which time he may be considered as *presiding* in the Court of King's Bench; for, although Sir Robert Heath, the King's Chief Justice, was superseded by an

1. "As long as he conducts himself well," instead of "during the pleasure" (of the King).

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ordinance, no successor to him was appointed,—and Rolle had only one colleague, who was very inefficient. But it was allowed that justice was now admirably administered; and if there were a certainty of always having a judge like Rolle in the common-law courts, he might safely be left to his own resources without assistance or control.

His admirable administration of justice.

At last the time arrived when in reality the Commonwealth was established, although the kingly title had not been formally abolished; and, on the suggestion of Oliver St. John, it was resolved to fill up all the vacant offices of the law. From his political ascendancy, this daring popular leader might have chosen any one of them for himself; but as, for private reasons, he preferred the "cushion of the Common Pleas," Rolle was promoted to be Chief Justice of the King's Bench.[1]

A.D. 1648.

He is made Chief Justice of the King's Bench.

On the 15th of November, 1648, the Lords Commissioners of the Great Seal went into that court, and a writ which they had sealed was read, whereby "Charles I., by the grace of God of Great Britain, France, and Ireland King [then a prisoner in Carisbrook Castle],[2] assigned his trusty and well-beloved

1. "1648. Whereas Mr. Justice Rolle is ordained by both Houses of Parliament to be Ch. J. of the King's Bench, who is now by letters patent one of the Justices of that Court (quamdiù se bene gesserit), the Lords and Commons do ordain, That, to the intent he may be constituted Ch. Justice according to the said ordinance, the said Mr. Justice Rolle be desired to surrender the said letters patents; which the Commissioners of the Great Seal are hereby ordered and authorized to accept, and immediately thereupon to constitute him Chief Justice, according to the said ordinance, without any supersedeas to his said letters patents."—November 13, 10 *Lords' Journals*, 587.

2. A magnificent feudal mansion, now in ruins, in the village of Carisbrook, on the Isle of Wight. Baedeker says: "This ancient, ivy-clad stronghold of the lord of the island is picturesquely placed on the top of a steep eminence. The earliest building was Saxon, but the *Keep*, the oldest existing portion, is of Norman origin. The other parts date chiefly from the 13th century, while the outworks were added by Queen Elizabeth. Charles I. was detained captive here for a considerable time before his exe-

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Henry Rolle to hold pleas before him," etc. It would have been very curious to read the orations delivered on this occasion, but the only further account we have of the ceremony is by Lord Commissioner Whitelock, who merely says, "The Commissioners of the Great Seal went into the King's Bench, where we sat in the middle, the Judges sitting on each side of us, and there we did swear the Lord Chief Justice of that Court, Judge Rolles; and Sir Thomas Widdrington (my brother commissioner) made a very learned speech to him."[1]

He refuses any connection with bringing the King to open trial.

Rolle had long been kept ignorant of the determination to bring the King to an open trial. Highly disapproving of this proceeding, he refused not only to preside at it, but to allow his name to be introduced into the ordinance for creating the High Court of Justice. The Lords having rejected the ordinance, and thereupon having been voted "useless," he was greatly alarmed at the coming crisis, though desirous that measures should be taken to ward off anarchy.

A.D. 1649.

On the 11th of January, 1648–9, Whitelock makes this entry: "A visit to Lord Chief Justice Rolles, a wise and learned man. He seemed much to scruple the casting off of the Lords, and was troubled at it. Yet he greatly encouraged me to attend the House of Commons, notwithstanding the present force upon them, which could not dispense with their attendance and performance of their duty who had no force upon them in particular."[2]

cution, and his son Henry, Duke of Gloucester, and his daughter, Princess Elizabeth, were afterwards imprisoned here. The Princess died in the castle nineteen months after her father's death, and the young Prince was released two years later. The remains of the rooms where Charles was imprisoned, and of the chamber in which his daughter breathed her last, may still be seen. The castle-well, 200 feet deep, from which the water is drawn by a donkey inside a large windlass wheel, is always an object of interest to visitors."—*Baedeker's Gt. Britain*, p. 73.

1. Mem. 343, 349; Styles, 340.

2. Mem. 368. In anticipation of the King's death, there was a grand

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His conduct on the execution of Charles I.

When the bloody catastrophe had been consummated, and an ordinance had passed "for abolishing kingship as unnecessary, burthensome, and dangerous to the liberty, safety, and public interest of the people of this nation," Rolle was again thrown into deep perplexity; but, upon the whole, he deemed it the part of a good citizen to submit to the supreme power established in the state, and he, together with five other judges, agreed to assist in the administration of justice under the "Keepers of the Liberties of England." To guard against the wild schemes then agitated, they required an assurance "that the fundamental laws should not be abolished." In consequence, the fundamental laws of England were preserved; many most important reforms were introduced into them,—and other improvements were proposed, which, after being forgotten for near two centuries, we have adopted in the reign of Queen Victoria.[1]

He is a member of the Council of State.

Rolle, feeling that the deliberations of the executive government could not be beneficially carried on without the presence of some one well skilled in the law, and deeming it essential that, at this time, the preponderance of the military chiefs should have some counterpoise, agreed to accept a seat in the Council of State, and he continued to attend its meetings till it was dissolved by Cromwell, together with the Long Parliament.[2]

consultation the same day with respect to the words to be substituted for *Carolus dei Gratia*, etc.; and it was at last agreed to substitute "The Keepers of the Liberties of England." The style continued till Oliver was made Protector.

1. One of them has still been successfully resisted by prejudice and selfishness—the establishment of a "General Register of Deeds affecting Real Property;" but this cannot be much longer deferred. Whitelock, 378.

2. Whitelock, 441, 448. Mr. Carlyle, from several sources, gives a picturesque narrative *more suo*, which will best represent this scene: "*April* 20, 1653: Young Colonel Sidney, the celebrated Algernon, sat in the House this morning; a House of some fifty-three. Algernon has left

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He was no longer in Cromwell's confidence; and, without taking any prominent political part, or caballing with the Protector's enemies, he testified his strong dislike of the arbitrary government then established. When the free parliament was called
A.D. 1654. in 1654, he was returned as one of the members for Devonshire; and he several times advised the House of Commons on juridical questions with admired calmness and dignity. Here, however, he was in danger of being overpowered by loquacity, pertness, and ignorance; and it was with much reluctance that he

distinct note of the affair; less distinct we have from Bulstrode, who was also there. Solid Ludlow was far off in Ireland, but gathered many details in after years; and faithfully wrote them down, in the unappeasable indignation of his heart. Combining these three originals, we have obtained the following: 'The Parliament sitting as usual, and being in debate upon the bill (for Parliamentary Reform), with the amendments, which it was thought would have been passed that day, the Lord General Cromwell came into the House, clad in plain black clothes and gray worsted stockings, and sat down, as he used to do, in an ordinary place.' For some time he listens to this interesting debate on the bill; beckoning once to Harrison, who came over to him, and answered dubitatingly. Whereupon the Lord General sat still for about a quarter of an hour longer. But now the question being to be put, That this bill do now pass, he beckons again to Harrison, says 'This is the time I must do it'—and so 'rose up, put off his hat, and spake. At the first, and for a good while, he spake to the commendation of the Parliament for their pains and care of the public good; but afterwards he changed his style, told them of their injustice, delays of justice, self-interest, and other faults'—rising higher and higher, into a very aggravated style indeed. An honorable member, Sir Peter Wentworth by name, rises to order, as we phrase it; says, 'It is strange language this; unusual within the walls of Parliament this! And from a trusted servant too; and one whom we have so highly honored; and one ——.' 'Come, come!' exclaims my Lord General, in a very high key. 'We have had enough of this,'—and in fact my Lord General, now blazing all up into clear conflagration, exclaims, 'I will put an end to your prating,' and steps forth into the floor of the House, and 'clapping on his hat,' and occasionally 'stamping the floor with his feet,' begins a discourse which no man can report. He is heard saying, 'It is not fit that you should sit here any longer! You have sat too long here for any good you have been doing lately. You shall now give place to better men. Call them in!' adds he briefly, to Harrison, in word of command; and 'some twenty or thirty' grim musketeers enter, with bullets in their snap-hances; grimly prompt for orders. . . . 'You call yourselves a Parliament,' continues my Lord General, in clear blaze of conflagration: 'You are no Parliament; I say, you are no Parliament!

ever gave his attendance.[1] His delight was to preside as a magistrate, and both in civil and criminal courts he was allowed to be unrivalled. CHAP. XII.

The questions of civil right which he determined have become obsolete; but several questions of constitutional law came before him which must always be interesting. Captain Streather, a zealous republican, setting at defiance the usurped power of Cromwell, was committed to prison under two warrants, one by the Council of State, and the other by the House of Commons—neither of them specifying the offence with which he was charged. Thereupon he sued out a *habeas corpus* in the UPPER BENCH, and prayed that he might be discharged on the ground that both warrants were illegal. Rolle, C. J., held the first warrant to be void, in spite of decisions to the contrary under the monarchy; but laid down a rule, which has been followed ever since, that parliamentary commitments cannot be challenged in a court of law: Privilege of Parliament: Capt. Streather's Case. Rule laid down that parliamentary commitments cannot be challenged in a court of law.

"Mr. Streather," said he, "one must be above another,

Some of you are drunkards,' and his eye flashes on poor Mr. Chaloner, an official man of some value, addicted to the bottle; 'some of you are'—and he glares into Harry Marten, and the poor Sir Peter, who rose to order, lewd livers both—'living in open contempt of God's commandments.' 'Corrupt, unjust persons; scandalous to the profession of the Gospel: how can you be a Parliament for God's people? Depart, I say; and let us have done with you. In the name of God—go!' The House is of course all on its feet—uncertain almost whether not on its head: such a scene as was never seen before in any House of Commons. History reports with a shudder that my Lord General, lifting the sacred mace itself, said, 'What shall we do with this bauble? Take it away!'—and gave it to a musketeer. And now, 'Fetch him down!' says he to Harrison, flashing on the Speaker. Speaker Lenthal, more an ancient Roman than anything else, declares he will not come till forced. 'Sir,' said Harrison, 'I will lend you a hand;' on which Speaker Lenthal came down, and gloomily vanished. They all vanished, flooding gloomily, clamorously out, to their ulterior business and respective places of abode: the Long Parliament is dissolved! 'It's you that have forced me to this,' exclaims my Lord General: 'I have sought the Lord night and day that He would rather slay me than put me upon the doing of this work.'"—*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.), p. 82.

1. See Barton's Diary; 3 Parl. Hist. 1428–1471.

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and the inferior must submit to the superior, and in all justice an inferior court cannot control what the parliament does: if the parliament should do one thing, and we do the contrary here, things would run round; we must submit to the legislative power; for if we should free you, and they should commit you again, why here would be no end, and there must be an end in all things. We may call inferior courts to account why they do imprison this or that man against the known laws of the land."

Captain Streather was remanded; but, the parliament being dissolved, he sued out another *habeas corpus*, when Prideaux, the Attorney General for the Commonwealth, contended that the Court had no power to discharge him:

Rolle, C. J.: "We examine not the orders of parliament; the question is, whether the order doth now continue? and I conceive it is determined by the dissolution of the parliament, and so it would have done by a prorogation. Let the prisoner be set at liberty."[1]

Trial of Don Pantaleon Sa.

The most interesting case which came before him was that of Don Pantaleon Sa. This nobleman, who was a knight of Malta, had accompanied his brother, the Portuguese ambassador, on a mission to London to negotiate a treaty with the Commonwealth of England. Having received some supposed affront in the New Exchange in the Strand,[2] he came to this quarter the following day at the head of an armed band, wantonly attacked the English who were there gathered together, and with a pistol, which he deliberately fired, shot dead an English gentleman who was casually passing by. He then took shelter in his brother's house, and claimed the right of remaining there as in a place of sanctuary.[3] But he was seized,

1. 5 St. Tr. 386; Styles, 415; Lord Campbell's Speeches, 238.

2. Afterwards called "Exeter Change," now removed as a nuisance.

3. Sanctuary was the name given to a place privileged as a safe refuge for criminals and political offenders. All churches and churchyards were,

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with several of his accomplices, and carried before Lord Chief Justice Rolle; who, exercising the same functions as his predecessors, acted like a modern police magistrate in taking preliminary examinations, granting warrants of commitment, and directing prosecutions to be instituted. He ordered these offenders to be imprisoned in Newgate, and brought to trial for murder. Strong representations were made by the Portuguese Government that this proceeding was a violation of the law of nations; but, upon the advice of Rolle, Cromwell was firm in his determination that the blood of an Englishman should be avenged, so that the English name might be respected all over the world.

Part taken by Rolle in the preliminary proceedings.

A special commission of *oyer and terminer* was issued to try the case, Chief Justice Rolle being at the head

July 5.

down to Henry VIII.'s time, invested with this protective power. The possible stay in sanctuary of any fugitive was strictly limited to a period of forty days, at the expiration of which time he was bound to quit the realm by the nearest port assigned him by the coroner to whom he had communicated the circumstances of his case. During his journey to the seacoast for the purpose of carrying out this self-banishment, the claimant of sanctuary privileges was guaranteed immunity from molestation as he journeyed on, cross in hand. In Henry III.'s reign, Hubert de Burgh's non-compliance with the forty days' sanctuary regulation placed him in the hands of his enemies. By Henry VII.'s time the custom of sanctuary was very much abused, having become the means of shielding criminals of all kinds from justice, and at his request Pope Innocent VIII. made three important alterations in it. First, that if a man, while enjoying the privileges of sanctuary, should take advantage of his position to commit some further offence against the laws of his country, he should at once and for ever forfeit the benefit of sanctuary; secondly, that the benefit of sanctuary should be strictly limited to a man's personal safety, and in no degree apply to the protection of his private property; thirdly, that when treason was the motive for seeking sanctuary, the King might have the offender specially looked to. By 27 Henry VIII., c. 19, sanctuary men were ordered to wear distinctive badges, and were forbidden to carry weapons, or to be out at nights, on pain of forfeiture of their privileges. Until the twenty-first year of James I. the custom still continued, and criminals continued to seek refuge in the places to which the privilege of sanctuary was attached; at this time, however, a statute was passed abolishing sanctuary privileges altogether.—*Low and Pulling's Dict. of Eng. Hist.*

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of it, assisted by four doctors of the civil law. Don Pantaleon and three of his accomplices were jointly indicted for the murder. He pleaded, in abatement to the jurisdiction of the Court,—"1st, that he was a foreign ambassador; and 2dly, that he was secretary to a foreign ambassador when the supposed offence was committed, and at the time of the arraignment." The only proof offered in support of the first plea was a letter to him from the King of Portugal, intimating an intention to make him ambassador in England when his brother, the present ambassador, should be recalled. The fact alleged in the second plea was not disputed; but the counsel for the prosecution strongly argued, that an ambassador, and, at all events, the attendants and servants of an ambassador, are liable to be tried by the municipal courts for any offence committed against the law of nature or the law of God, in the country where they have forfeited their privilege.

Don Pantaleon pleads exemption from indictment.

Rolle's answer.

Rolle, C. J.: "We are not called upon to decide in this case whether a foreign ambassador is exempted from the jurisdiction of our common-law courts, if he commits an offence contrary to the law of God and punishable with death if committed by an English subject. A foreign ambassador certainly is not liable for any infraction of the mere municipal laws of that nation wherein he is to exercise his functions. If he makes an ill use of his character, he may be sent home and accused before his own master, who is bound to punish him or avow himself the accomplice of his crimes. But great doubts have been entertained whether this exemption extends to crimes which are *mala in se*, and whether a distinction may be made among crimes *mala in se*, so as to take away the exemption only in regard to crimes more particularly dangerous and atrocious? Some authorities say that if an ambassador commits any offence against the law of reason and nature, he shall lose his privilege; while others say, that although, if an ambassador conspires the death of the King in whose land he is, he may be condemned and executed for treason, if he commits any other species of treason he must

CHAP. XII. Rolle's answer, continued.

be sent to his own kingdom. It may be urged that to the natural universal rule of justice, ambassadors as well as other men are subject in all countries; and consequently it is reasonable that wherever they transgress it, there they shall be liable to make atonement. But, on the other hand, it may be thought that the security of ambassadors is of more importance than the punishment of a particular crime; and the judgment of the Romans upon the ambassadors of Tarquin may be fitly followed, who were sent back unpunished when detected in committing acts amounting to treason against the state, upon which Livy observes, 'Et quamquam visi sunt commisisse, et hostium loco essent, JUS TAMEN GENTIUM VALUIT.'[1] Here, however, as I before remarked, the question does not arise; for, upon the evidence, the prisoner Don Pantaleon Sa is no ambassador. He does not represent the King of Portugal to our Commonwealth; and the very letter which he produces, proves that his brother alone is in that capacity, as it only expresses a conditional intention of appointing him ambassador at a future time. What we have to consider therefore is the nature and extent of privilege he enjoys as being in the employment of the ambassador. No authority has been cited to prove the existence of the exemption contended for, and we can only consider how it stands upon principle. Is it necessary to the due carrying on of diplomatic intercourse between independent nations? I clearly think that it is not, and here there is no balance between the convenience and the mischief of the exemption claimed. It may be necessary that the persons of the secretaries and other servants of ambassadors should be privileged from civil process, and little inconvenience follows from exempting them; but although it may be essential that the ambassador himself should not be tried for crimes in the country to which he is accredited, he may still represent his sovereign and carry on his negotiations after one in his service has been apprehended for a crime; and what a frightful condition we should be in, if the doctrine were laid down that all who are in the employment of a foreign ambassador in England may rob, ravish, and murder with impunity! I am

1. "And although they were detected in committing acts against the state, and should be considered as enemies, yet the law of nations prevailed."

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therefore clearly of opinion that the prisoner Don Pantaleon Sa must plead to this indictment.[1] As yet we are bound to consider him innocent, and we shall all heartily join in the prayer that 'God may send him a good deliverance.'"

Don Pantaleon is compelled to plead to indictment.

The three civilians expressed their concurrence: the prisoner pleaded not guilty, along with the others joined in the indictment; and a jury *de medietate linguæ*, half English and half foreigners, was impanelled to try them.

Don Pantaleon Sa then prayed that he might have the assistance of counsel in conducting his defence on the merits:

Rolle, C. J.: "By our rules of proceeding this may not be. On questions of law only, are persons tried for felony to have the assistance of counsel. With respect to facts they are supposed to be competent to conduct their own defence, and in this case you shall find that we the Judges stand equal between you and the Commonwealth."

The trial.

The trial then proceeded, and was conducted with great impartiality and regularity.[2] A number of witnesses were examined, who clearly proved that the attack made by the prisoners at the New Exchange was premeditated and unprovoked; that Mr. Greneway, a gentleman of Gray's Inn, son to the Lady Greneway, was there with his sister and a gentle-

1. See Vattel, b. 4, c. 7.

2. During the Commonwealth, criminal procedure was greatly improved. Down to the breaking out of the civil war, trials for felony and treason were conducted without any regard to rules of evidence, and written depositions or confessions of accomplices were admitted without scruple. But, through the instrumentality of the Commonwealth judges, the rule was laid down that no evidence could be received against prisoners except that of witnesses confronted with them and sworn. The defect of depriving them of the assistance of counsel, which continued near two centuries longer, had then been very nearly remedied; for Lord Commissioner Whitelock said, "I confess I cannot answer the objection that for a trespass of 6*d.* value a man may have a counsellor-at-law to plead for him, but where his life and posterity are concerned he is not admitted this privilege. A law to reform this I think would be just, and give right to the people."—*Mem.*, November, 1649.

woman whom he was to have married; that the word "*Safa*" being given, which was the word when the Portuguese were to fall on, without any affront being offered to them, one of them shot Mr. Greneway dead with a pistol; that a number of other Englishmen were dangerously wounded; that Don Pantaleon Sa was the leader of the insurgents; and that the other prisoners were armed, and took an active part in the affray.

The jury found all the prisoners *guilty*, and "Lord Chief Justice Rolle sentenced them to be hanged." Unfortunately, no part of his address to them in passing sentence is preserved. The sentence.

Great interest was made to save them, and protests were presented not only by the Portuguese Government, but by several other foreign ambassadors, who were alarmed by the thought of such a precedent; but Cromwell, after taking the opinion of Rolle and the other judges, remained firm. Determined that the principal offender should suffer, and thinking that one victim would sufficiently vindicate the national honor, he was a good deal perplexed respecting the manner of dealing with the others, for the "Instrument of Government," under which he now professed to act, gave him no power to pardon in cases of murder.[1] In doing what he thought substantially right, he did not long regard such formalities. "On the 10th of July the Portugal ambassador's brother was conveyed from Newgate to Tower Hill[2] in a coach and six horses, in

1. "Art. III.—All writs, etc., which now run in the name and style of '*The Keepers of the Liberties of England*,' shall run in the name and style of 'THE LORD PROTECTOR,' from whom, for the future, shall be derived all magistracy and honors in these three nations; and shall have the power of pardon, except in cases of murder and treason."

2. *Tower Hill* is a large plot of open ground, surrounded with irregular houses. In one of these lived Lady Raleigh while her husband was imprisoned in the Tower. Where the garden of Trinity Square is now planted, a scaffold or gallows of timber was always erected for the

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mourning, with divers of his brother's retinue with him. On the scaffold he spake something to those who understood him, in excuse of his offence, laying the blame of the quarrel and of the murder upon the English. After a few private words and passages of popish devotion with his confessor, he gave him his beads and crucifix, laid his head on the block, and it was chopt off at two blows. The execution of the others was stayed, and, without any formal pardon, after a few months' imprisonment they were set at liberty. The very day after the execution of Don Pantaleon Sa, articles of peace with Portugal were signed, and the whole affair greatly exalted the fame of the English nation all over Europe." [1]

The national honor vindicated by the execution.

A.D. 1655. Chief Justice Rolle, when sitting at the assizes, in danger of being hanged.

Chief Justice Rolle had refused to sit on the trial of royalists, but he continued to perform the usual duties of his office, and, soon after, he went the Western Circuit with one of his *puisnies*. While holding the assizes at Salisbury, he was in the greatest danger of coming to a violent end. Penruddock, at the head of a band of several hundred cavaliers, suddenly got possession of the city. Some of the most unruly, without his knowledge, seized Chief Justice Rolle and his brother judge, who were then actually in court in their robes, and required them to order the sheriff to proclaim Charles II., meaning after the proclamation "to cause them all three to be hanged, who (says Lord Clarendon) were half dead already." They refused, and the threat was about to be executed in good earnest; but many country gentlemen protested against it, and Penruddock dismissed the Judges, having taken their commissions from them, and desired

execution of those who were delivered by writ out of the Tower to the sheriffs of London, there to be executed. Only the queens and a very few other persons have suffered within the walls of the Tower.—*Hare's Walks in London*, vol. i. p. 367.

1. Rebellion, iii. 746; 5 St. Tr. 462–518.

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them to "remember on another occasion to whom they owed their lives." They were still resolved to hang the sheriff, "who positively, though humbly and with many tears, refused to proclaim the King;" but he contrived to make his escape. It so happened that in a few days this insurrection was quelled, and the greatest number of the insurgents, being taken prisoners, were lodged in Salisbury jail. Orders thereupon came down from London to Chief Justice Rolle, requiring him to try them for high treason; but he returned to town without trying any of them, saying that "he much doubted whether they had done anything which amounted to treason; and that at any rate he was unfit to give judgment in this case, wherein he might be considered a party concerned."[1]

He refuses to try the royalist insurgents.

He was now on very bad terms with the Protector, who imitated almost every act of arbitrary power which he had formerly reprobated. After all that had been said about the levying of taxes without authority of Parliament, he had, by his own authority alone, imposed a tax upon the importation of goods. Mr. George Cony, a merchant of London—another Hampden—brought an action to recover back a sum of money which the collector had extorted from him under pretence of this tax. Cromwell at first tried to cajole him into submission, and then committed him to prison. Here we have the counterpart of "*Darnel's Case*,"[2] for a writ of *habeas corpus* was sued out, and the validity of the commitment was debated. The following is the amusing conclusion to the story, as related by Lord Clarendon:

Cony's Case.

"Maynard, who was of counsel with the prisoner, demanded his liberty with great confidence, both upon the illegality of the commitment and the illegality of the imposition. The

1. Rebellion, iii. 845; Wood's Ath. iv. 417.
2. Ante, p. 90.

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Judges could not maintain or defend either, and plainly enough declared what their sentence would be; therefore the Protector's attorney required a farther day to answer what had been urged. Before that day, Maynard was committed to the Tower for presuming to question or make doubt of his authority, and the Judges were sent for and severely reprehended for suffering that license. When they, with all humility, mentioned the law and MAGNA CHARTA, Cromwell told them, with words of contempt and derision, 'their *Magna F***** should not control his actions, which he knew were for the safety of the commonwealth.' He asked them, 'who made them Judges?—whether they had any authority to sit there but what he gave them?—and if his authority were at an end, they knew well enough what would become of themselves; and therefore advised them to be more tender of that which could only preserve them,' and so dismissed them with caution 'that they should not suffer the lawyers to prate what it would not become them to hear.'"[1]

Cromwell's respect for Magna Charta.

Chief Justice Rolle resigns.

It is not true, as has been sometimes said, that, "in *Stuart fashion*, Rolle was actually dismissed from his office;" but he thought it very necessary for his own dignity that he should withdraw. "In the mean time," says Ludlow, "upon consideration that his continuance in that station was like to ensnare him more and more, he desired, by a letter to Cromwell, to have his *Quietus;* and Sergeant Glyn was appointed to succeed him in his employment, as a fitter instrument to carry on the designs on foot."[2]

June 5, 1655.

He retired to a country-house he had purchased, at Shapwick, near Glastonbury, in Somersetshire; and,

1. Rebellion, iii. 985. The noble historian adds, with his usual candor,—"Thus he subdued a spirit which had been often troublesome to the most sovereign power, and made Westminster Hall as subservient and obedient to his commands as any of the rest of his quarters. In all other matters which did not concern the life of his jurisdiction he seemed to have great reverence for the law, rarely interposing between party and party."

2. Mem. p. 201; Styles, 452. In a debate in the House of Commons in March, 1659, Chaloner, during the debate, said, "Judge Rolles, learned and honest as any, was shuffled out of his place by the Lord Protector, and another put in his place."—*Burton's Diary.*

after languishing a year, expired there in the sixty-eighth year of his age. CHAP. XII. His death.

He was buried in a little parish-church in the neighborhood, and no monument was erected to his memory; but he continues to be reverentially remembered in our profession by his labors and by his virtues. Every lawyer's library contains Reports by him of "Divers Cases in the Court of King's Bench, in the time of King James I.," remarkable for their clearness, precision, and accuracy; and his "Abridgment of the Common Law," the fruit of his early industry. Although he lives as an author, it is as a great magistrate that he is now venerated. And he really seems to have had a *genius* for judging causes; that is to say, that he did this better than any thing else in the world,—better than any one of his admirers would have thought possible,—and as well as any of those who have most distinguished themselves in the same line. *Laudatus a laudato;*[1]—his principal panegyrist is Sir Matthew Hale, who, after bestowing warm praise upon him as an advocate, thus proceeds: His singular ability as a Judge.

"Although when he was at the bar he exceeded most others, yet when he came to the exercise of judicature his parts, learning, prudence, dexterity, and judgment were more conspicuous. He was a patient, attentive, and observing hearer, and was content to bear with some impertinences, rather than lose anything that might discover the truth or justice of any cause. He ever carried on as well his search and examination, as his directions and decisions, with admirable steadiness, evenness, and clearness; great experience rendered business easy and familiar to him, so that he gave convenient dispatch, yet without precipitancy or surprise. In short, he was a person of great learning and experience in the common law, profound judgment, singular prudence, great moderation, justice, and integrity."[2] Hale's panegyric upon him.

1. "He has been extolled by excellent (men)."
2. Preface to Rolle's Abridgment by Sir Matthew Hale.

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It seems that he was liable to the imputation of being too fond of money. Hood thus concludes his short notice of him:

"The great men of the law living in those times used to say that this Henry Rolle was a *just* man, and that Matthew Hale was a *good* man: the former was by nature penurious, and his wife made him worse; the other, on the contrary, being wonderfully charitable and open-handed."[1]

His descendants.

The Chief Justice left numerous descendants. The late Lord Rolle was the head of the family which, if we may trust to the pedigree prefixed to the ROLLIAD, was descended from the ancient Duke Rollo[2] of Normandy, and the wife of a Saxon drummer.[3]

Rolle's successor as Chief Justice of the Upper Bench was a man of very different character;—able, and well-versed in his profession, but eager to advance himself,—fond of political intrigue, busy, bustling, and unscrupulous. JOHN GLYN was born at Glyn Llynon, in Caernarvonshire, and was the younger son of a respectable family which had long been seated there. He had an excellent education, being bred at Westminster, Oxford, and Lincoln's Inn. He was called to the bar in 1630; and, rapidly getting into practice, was, while a very young man, made High Steward of West-

Chief Justice Glyn.

His early career.

1. Athenæ, iv. 418.

2. Rollo, first Duke of Normandy, born about 860 A.D. He was originally a Norwegian viking or pirate, and was noted for strength and martial prowess. In the reign of Charles the Bald he ascended the Seine and took Rouen, which he kept as a base of operations. He gained a number of victories over the Franks, and extorted from Charles III. in 912 the cession of the province since called Normandy. By the famous treaty which Charles and Rollo signed at this time the latter agreed to adopt the Christian religion. Died about 930.—*Thomas' Biog. Dict.*

3. A doubt is stated to have existed whether, in the time of the wars of York and Lancaster, although the Rolles were represented by our author to have been sheriffs of the county ("Sheriffi Devonienses Rolli fuerunt"), the head of the house was not a sheriff's officer ("Bailivus ipse potius quam Sheriffus"). But the Chief Justice certainly vindicated the glory of his race. See "Short Account of the Family of the Rollos, now Rolles, faithfully extracted from the Records of the Heralds' Office."

minster, and Recorder[1] of London. He associated himself with the patriots from ambition rather than principle, and made himself popular by declaring at clubs and coffee-houses against the arbitrary acts of the Government. In consequence, when the year 1640 arrived and it became indispensably necessary to apply to the House of Commons for supplies, he was elected representative for the city of Westminster, first in the "Short Parliament,"[2] and then in the "Long Parliament." Thus his career is described by Wood: "He was appointed one of those doughty champions to bait the most noble and worthy Thomas Earl of Strafford,[3] in order to bring him to the

1. Before the Municipal Corporations Act of 1835, 159 out of the 246 corporate towns in England had Recorders or Stewards. Most of these were nominated by the Common Council, sometimes however by the aldermen only, sometimes by all the burgesses. "They were mostly magistrates within their boroughs, and quorum judges of the Courts of General and Quarter Sessions, and Courts of Record where those existed." But few Recorders, however, actually resided in the towns, and in many cases the office was obtained only in order to facilitate the exercise of political influence. By the act of 1835 all towns without a separate Court of Quarter Sessions were deprived of their criminal jurisdiction; but boroughs were permitted to petition the Crown for a separate Court of Quarter Sessions, stating the salary they are ready to pay the Recorder. If the petition is granted the Crown henceforward nominates the Recorder. He must be a barrister of at least five years' standing. He holds his court four times a year, or more often if necessary, and is sole judge therein. He is also a justice of the peace for the borough, and has precedence next after the mayor. In 1879 ninety-six boroughs had Recorders under the act.—*Low and Pulling's Dict. of Eng. Hist.*

2. The fourth Parliament called by Charles I. is known by this name. It met on the 13th of April, 1640—the first Parliament since the dissolution of 1629—and was dissolved after a session of three weeks only, on the 5th of May. Never since the institution of regular parliaments had there been so long an interval without one, as that which preceded the summoning of this assembly.—*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.), p. 6.

3. Thomas Wentworth, Earl of Strafford, born in London in April, 1593, was the eldest son of Sir William Wentworth, from whom he inherited a large estate. He was educated at Saint John's College, Cambridge, and married in 1611 a Miss Clifford, a daughter of the Earl of Cumberland. In 1614 he was elected to Parliament for Yorkshire, which he also represented in that which met in 1621. His wife having died in 1622, he married Arabella Hollis, a daughter of the Earl of Clare. He

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block;[1] which being done he showed himself a great enemy to the bishops and their functions, a zealous covenanter, a busy man in the Assembly of Divines—and what not?—to promote his interest and gain wealth."[2]

His speech in the Long Parliament. Jan. 1642.

There is only one parliamentary speech of his preserved. This he made in the committee of the House of Commons which met at Guildhall after Charles's insane attempt to arrest the five members with his own hand.[3] The orator, in defence of parlia-

was appointed sheriff of Yorkshire in 1625. In the Parliament which met in 1628 he acted with the popular party, and made able speeches against the arbitrary measures of the Court, in order, perhaps, to give the King a proper idea of the value of his services. Before the end of the year he was created a Baron, and on the death of the Duke of Buckingham (1628) he was appointed Lord President of the North, and Privy Councillor. He was a political and personal friend of Archbishop Laud. He was ambitious, energetic, haughty, and unscrupulous. He declared that he would "lay any man by the heels" who should appeal from his sentence to the courts at Westminster. In 1631 or 1632 he was appointed Lord Deputy of Ireland, which he governed in a tyrannical manner. His cruelty to Lord Mountmorris and others excited great indignation. He directed his highest energies to the formation of a standing army, and boasted that in Ireland "the King was as absolute as any prince in the whole world could be." He was created Earl of Strafford in 1639 or 1640. His design was to make the royal power as absolute in England as it was in Ireland. The revolt of the Scotch, whom the King foolishly provoked to fight for their religious rights, interfered with the success of Strafford's scheme. He was summoned to London by Charles I. in 1639, and appointed General-in-Chief in 1640; but before he could join the army it was driven from the border by the insurgents, and the war was ended by a treaty. The Long Parliament, which met in November, 1640, impeached Strafford of high treason. He was accused of an attempt "to subvert the fundamental laws of the country." John Pym was the principal speaker against him. The Commons abandoned the impeachment, and passed a bill of attainder by a large majority. He was beheaded in May, 1641.—*Thomas' Biog. Dict.*

1. He drew, and delivered to the Lords, the replication of the Commons to Lord Strafford's plea.—*Com. Journ.*

2. Athenæ, iii. 752; 2 Parl. Hist. 1023.

3. The most dramatic incident that ever took place in the House of Commons, and the most important in its consequences, was the attempt of Charles I. in person to arrest the leading popular members of the assembly. Pym, Hampden, Hazlerig, Hollis, and Strode were the five whom he had determined to secure. With an armed company numbering some two or three hundred officers and soldiers, attended by his nephew

mentary privilege so grossly violated, inveighs bitterly against all implicated in the transaction; and he was the first to threaten personal violence to the King himself. According to a report of his speech prepared by himself, he thus denounced vengeance:

"I conceive, sir, did these persons but remember the many precedents yet extant of the just and deserved punishments inflicted by former parliaments upon such miscreants, —as witness the Archbishop of York, the Earl of Suffolk, Chief Justice Tresilian, and others condemned to death for the like offence in the reign of Richard II.,—they would have prejudged that the like danger would fall upon themselves for their evil actions. Nay, sir, these men, if they had considered with themselves the just judgments of God that have immediately lighted upon the necks of such as have been the troublers of kingdoms whereof they have been members, as recorded in sacred writ, they would have laid their hands upon their mouths

Charles, the Elector Palatine, and several members of the Court, the King marched from Whitehall to Westminster Hall on Tuesday, the 4th of January, 1642. The House gained word of his coming from one who had passed the crowd, and a lady of the Court (Lady Carlisle) also sent a hasty message to put Pym on his guard. It was resolved that the five members, who had been impeached by the King's Sergeant on the previous day, should "depart forthwith, to avoid combustion in the House." Four left immediately, but Strode insisted on staying to face the King, until he was forced from the House by his friend Sir Walter Earle, just as Charles was entering Palace Yard. A lane was made by the courtiers as the King advanced through Westminster Hall up to the door of the Commons, and some of his armed party pressed forward and thrust away the doorkeepers, but were commanded by Charles to refrain from entering "upon their lives." A knock was given, and the door was opened at once, the King passing in accompanied by his nephew alone. He advanced, uncovered, toward the chair, glancing eagerly at the place where Pym was accustomed to sit, but not seeing him, approached Speaker Lenthal and said, "By your leave, Mr. Speaker, I must borrow your chair a little." The Speaker left, and the King entered it, again looking eagerly around, while the members stood uncovered before him. The silence was painful; the King broke it at length, in slow utterances. Rushworth, a clerk at the table, appears almost alone to have kept his composure, coolly noting down "in character" the King's words, of which Charles asked him the same evening to give an exact transcript. "Gentlemen," said he, "I am sorry for this occasion of coming unto you. Yesterday I sent a sergeant-at-arms, upon a very important occasion, to apprehend some that, by my command, were accused of high treason, whereunto I did expect obedience, and not a message; and I must declare unto you here, that albeit no king that

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and hearts when they went about to speak or do anything tending to the dishonor of Almighty God."

Glyn at this time was a strong Presbyterian, and so remained till the Independents had completely gained the ascendency. Taking the covenant, he assisted in framing the "Directory for Public Worship," which superseded the *Liturgy;* and he was as strong against allowing private judgment in matters of religion as any Papist. Meanwhile, in the language then used by his opponents, "he was very diligent in feathering his own nest." He obtained a sinecure in the Petty-Bag Office,[1] worth 1,000*l.* a year; and other places, which he could not hold himself, he procured for his creatures and kindred. The army, however, viewed with envy the manner in which, while *they* were encountering all

His opposition to private judgment in religion.

A.D. 1646.

ever was in England shall be more careful of your privileges, to maintain them to the uttermost of his power, than I shall be, yet you must know that in cases of treason no person hath a privilege. And therefore I am come to know if any of those persons that were accused are here; for I must tell you, gentlemen, that so long as these persons that I have accused, for no slight crime but for treason, are here, I cannot expect that this House will be in the right way that I do heartily wish it; therefore I am come to tell you that I must have them wheresoever I find them." He again looked about him, and called Mr. Pym by name. No answer being made, he turned to the Speaker, and required to know whether any of the persons he had named were in the House. Lenthal answered, kneeling, "May it please your Majesty, I have neither eyes to see nor tongue to speak in this place but as the House is pleased to direct me, whose servant I am here; and humbly beg your Majesty's pardon that I cannot give any other answer than this to what your Majesty is pleased to demand of me." "Well," said the King at last, "since I see all the birds are flown, I do expect from you that you will send them unto me as soon as they return hither." Apparently impressed by the attitude of the Speaker and the House, he added something more to the effect that he had never intended any force, but to proceed against the members in a legal and fair way, concluding, "I will trouble you no more, but tell you I do expect, as soon as they come to the House, you will send them to me, otherwise I must take my own course to find them." He then retired, "pulling off his hat till he came to the door," the members scowling at him and audibly muttering "Privilege! privilege!" The House adjourned itself immediately the King had left.—*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.), p. 32.

1. One of the branches of the Court of Chancery. The clerk of this office is appointed by the Master of the Rolls.—*Chambers' Encyc.*, vol. vii. p. 456.

sorts of dangers and privations, the members of the House of Commons were enriching themselves; and Cromwell, taking advantage of this feeling, brought in his famous "Self-denying Ordinance,"[1]—the foundation of his subsequent greatness. Glyn, with Hollis[2] and Stapleton, his close allies, strenuously opposed a measure likely to be so detrimental to themselves and to their party. "These were all men of parts, interest, and signal courage, and did not only heartily abhor the intentions which they discerned the army to have, and that it was wholly to be disposed according to the designs of Cromwell, but had likewise

1. The Self-denying Ordinance was a measure proposed in the Long Parliament on Dec. 9, 1644, by Mr. Zouch Tate, member for Northampton. The words of the resolution were "that no member of either House of Parliament shall during the war enjoy or execute any office or command, military or civil, and that an ordinance be brought in to that effect." An ordinance was brought in and passed the Commons on Dec. 19, by the small majority of seven votes. After some discussion and hesitation the Lords rejected it, giving as a reason that they did not know what shape the army would take. The Commons at once produced a scheme "for new modelling of the army," which passed the Commons on Jan. 28, 1645, and the Lords on Feb. 15. A second Self-denying Ordinance was now introduced, which passed the Lords on April 3, 1645. It provided that all members of either House who had since the beginning of the present Parliament been appointed to any offices, military or civil, should vacate those offices within forty days. But it differed from the first ordinance in that it did not prevent members from taking office on any future occasion. The name given to this ordinance is perhaps derived from a phrase used by Cromwell, who was one of its strongest supporters. "I hope," he said, "we have such English hearts and zealous affections towards the general weal of our mother country, as no members of either House will scruple to *deny themselves*, and their own private interests, for the public good."—*Low and Pulling's Dict. of Eng. Hist.*

2. Lord Hollis, second son of the Earl of Clare, and brother-in-law of the Earl of Strafford, was born at Haughton in 1597. In the reign of Charles I. he was one of the leaders of the Opposition in Parliament, and in 1629 was condemned to imprisonment during the King's pleasure. He was one of the five members whom the King rashly attempted to arrest in the House of Commons on a charge of treason (1642). After the division between the Presbyterians and Independents occurred, Hollis was the leader of the former. He was expelled from Parliament at the time of Pride's Purge, and fled to France. He favored the Restoration, was created a peer by Charles II. in 1660, and was sent as ambassador to France in 1663. Died in 1680.—*Thomas' Biog. Dict.*

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declared animosities against the persons of the most active and powerful officers."[1] They had a considerable majority in the House of Commons, and upon a peaceable division the Ordinance must have been thrown out. A council of officers, therefore, on Cromwell's suggestion, preferred an impeachment for high treason against Glyn and ten other members of the House of Commons, and insisted that they should be immediately sequestered and imprisoned. The demand was at first resisted, on the ground that the accusation was general; but it was answered, that, on a similar accusation, the Earl of Strafford had been committed to the Tower by the House of Lords,—and, erelong, Glyn was in the same cell which that great state offender had occupied. The Self-denying Ordinance having passed, he was deprived of all his employments, including even the Recordership of the City of London.[2]

He is impeached for opposing the Self-denying Ordinance.

Glyn was a man in every political revolution to side with the victorious party, and to contrive to gain the favor of those who had beaten him. We are not informed how he made advances to the Independents[3]

He is reconciled to Cromwell. A.D. 1648.

1. Rebellion, iii. 87. By Glyn's advice, Hollis sent Ireton a challenge, and, the saintly soldier answering that it was against his conscience to fight a duel, the challenger pulled his nose, observing, "If your conscience keeps you from giving satisfaction, it should keep you from offering affronts." This affair greatly exasperated the differences between the Presbyterians and Independents.

2. Rebellion, ii. 907, iii. 91; Athenæ, iii. 753.

3. Independents. As early as 1568 a congregation of Separatists existed in London, organized upon the principle that Christians ought to be gathered together in strictly voluntary and self-governing congregations or churches. They numbered about two hundred, all poor, and the majority women, under the pastorate of a certain Richard Fitz. The first prominent teacher of this theory, however, was Robert Browne, a clergyman and graduate of Cambridge, whose greatest activity was during the years from 1571 to 1581. Owing to the protection of his powerful relative, Burleigh, Browne escaped punishment, and finally conformed. But his tracts formed the great storehouse of argument for those who had accepted his doctrine—especially numerous in the eastern counties—and they were long known only as Brownists. Several Separatist churches

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on his liberation, but, soon after, he was allowed to resume his seat in the House of Commons as member for Westminster; and when negotiations were going on for a settlement with the King, now a prisoner in the Isle of Wight, we find him in the confidential situation of one of the commissioners on the part of the Parliament. He was soon after raised to the degree of Sergeant-at-law, being one of those on whom this honor was conferred by order of the House of Commons.

Glyn was too cautious a man to take any part in the King's trial; and he remained very quiet for several years, following his profession, and watching the course of events. But when the Protectorate was firmly established, he professed to be a zealous

were formed, especially in London, which met in secret, and were often discovered and dispersed by the authorities: many of their members were imprisoned and five executed. Of these Henry Barrowe, a barrister of Gray's Inn, executed in 1593 for the publication of seditious books, i.e., pamphlets against the Established Church, was the most important, and for some time "Barrowist" was used as a synonym of Brownist. The repressive measures of the Government caused the members of a Brownist church, which had been formed in London about 1592, to flee to Holland, and they finally settled at Amsterdam. Another and more successful church was that of Nottinghamshire men at Leyden under John Robinson, and this Leyden church is the true "parent of Independency alike in England and America." In 1620 the first settlement was made in New England by Independents coming from Holland in the *Mayflower;* the New World became the refuge of all who were attacked by the ecclesiastical authorities at home, and Independency became practically the established religion in the New England colonies.

The example of New England was of the greatest importance when, with the meeting of the Long Parliament, the Independents at last obtained freedom of speech in England. It is not necessary here to show how the growth of Independency accompanied the victories of the New Model; and how the attempt to substitute the complete Presbyterian system for that of Episcopacy was defeated. Few of the early Independents advocated entire voluntaryism, and many accepted benefices and received tithes under the rule of Cromwell. But in such cases, while the minister preached to all the parishioners in the parish church, there was often an attempt to create, side by side with the parochial organization, a special Independent Church. Difficulties arose when the Independent ministers refused to administer the sacrament to persons outside this inner church, and one at least of the justices on assize advised aggrieved parishioners to

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supporter of the plan for putting the royal diadem on the head of the Protector.

In Cromwell's reformed parliament he was returned for the county of Caernarvon, and, being a member of the committee appointed to remove the objections made by his Highness to accept the title of OLIVER I., which was offered to him, he not only took an active part in the conferences at Whitehall, but published a pamphlet, entitled "Monarchy asserted to be the best, most ancient, and legal form of government."

A.D. 1655. He presides at the trial of Penruddock.

When Chief Justice Rolle refused to try Penruddock[1] and the royalists in the West who had saved his life, and Sir Matthew Hale, then a Judge of the Common Pleas, had excused himself from this service, Glyn was sent down to Salisbury along with Sergeant Maynard to dispose of them; and their services on this occasion were celebrated in the well-known lines of Hudibras:

> "Was not the King, by proclamation,
> Declared a rebel o'er all the nation?
> Did not the learned Glyn and Maynard,
> To make good subjects traitors, strain hard?"

withhold tithes. In 1658 a synod of Independent Churches was held in London which drew up the *Savoy Declaration*, following in doctrine the Westminster Confession, but adding their peculiar theory of Church government. The Act of Uniformity drove Independents with Presbyterians out of the National Church, and the rigid penal code of Charles II. prevented their meeting in worship. Later in the reign of Charles II., and under James II., they again began to form churches, and under William III. obtained toleration. But their numbers were much diminished, and it was not till the evangelical movement of the latter half of the eighteenth century that they began to recover strength. As meanwhile the Presbyterian body had declined in numbers, and had largely become Unitarian, they became in the nineteenth century one of the most important of the Nonconformist bodies. During the eighteenth century they had long received a *regium donum* of 1,000*l.* a year for the widows of ministers; but in the nineteenth the wrongfulness of endowment became one of their main tenets. They are now more usually known as Congregationalists, and are united in a "Congregational Union of England," with subordinate "County Unions."—*Low and Pulling's Dict. of Eng. Hist.*

1. Colonel John Penruddock, an English royalist, was one of the leaders of an insurrection against Cromwell in 1655. He was beheaded in the same year.—*Thomas' Biog. Dict.*

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We have a very full account of the trial by Penruddock himself, from which it would appear that Glyn treated him with extreme harshness and insolence. The indictment was for high treason in levying war against the Lord Protector. The prisoner argued that "there could be no treason unless by common law or statute law, but this is neither on the common law or the statute; *ergo*, no treason.'

Account of the trial.

Glyn: "Sir, you are peremptory; you strike at the Government; you will fare never a whit the better for this speech." *Penruddock:* "Sir, if I speak any thing which grates upon the present Government, I may confidently expect your pardon; my life is as dear to me as this Government can be to any of you. The holy prophet David, when he was in danger of his life, feigned himself mad, and the spittle hung upon his beard. You may easily therefore excuse my imperfections. The 'Protector' is unknown to the common law; and if there be any statute against which I have offended, let it be read. My actions were for the King, and I well remember Bracton saith, 'Rex non habet superiorem nisi Deum.'[1] You shall also find that whoever shall refuse to aid the King, when war is levied against him or against any that keep the King from his just rights, offends the law, and is thereby guilty of treason; and yet you tell me of a statute which makes my adhering to my King according to law to be high treason. Pray let it be read."

The only answer he received was, "Sir, you have not behaved yourself so as to have such a favor from the Court." Evidence of the insurrection being then given, and of the taking of Salisbury in the King's name while the Protector's judges were holding the assizes there, Penruddock delivered a very eloquent speech to the jury, which he gives at full length:

"This being done," he says, "Sergeant Glyn, after a most bitter and nonsensical speech, gave sentence against me, viz., to be drawn, hanged, and quartered: I observe treason in this

1. "The King has no one above himself except God."

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age to be an *individuum vagum*,[1] like the wind in the Gospel which bloweth where it listeth; for that shall be treason in me to-day, which shall be none in another to-morrow, as it pleaseth Mr. Attorney."

He was a very pious as well as a very brave man, and as he was ascending the scaffold he said beautifully, "This I hope will prove to be like Jacob's ladder; though the feet of it rest on earth, yet I doubt not but the top of it reacheth to heaven."[2]

Glyn is made Chief Justice. June 15, 1655.

Rolle being driven, not long after, to resign the Chief Justiceship of the Upper Bench, Glyn was appointed to succeed him. His installation took place with great ceremony, when L'Isle, Lord Commissioner of the Great Seal, "did make a learned speech, wherein he spoke much in commendation of the good government (as he termed it) that they then lived under."[3]

His creditable conduct in that office.

Glyn filled this office till the eve of the Restoration, a period of nearly five years, during which he discharged its judicial duties very creditably. He was an extremely good lawyer, he was very assiduous in private causes, he was very impartial, and he could even put on a show of independence between the Protector and the subject.

His chief reporter is Styles, who, being obliged by an ordinance of the House of Commons to abjure the Norman French, thus laments the hardship imposed upon him:

May, 1658.

"I have made these reports speak English, not that I believe they will be thereby generally more useful, for I have

1. "A wandering or inconstant atom." 2. 5 St. Tr. 767–790.

3. Athenæ, iii. 753. The following is from Styles: "Memdum.—Trin. Term, 1655. Justice Aske sat alone in the Court of Upper Bench, being then the sole Judge there, the late Lord Chief Justice Rolle having surrendered his patent. Afterwards John Glyn, his Highness the Lord Protector's Sergeant-at-law, took his place of Lord Chief Justice of England in this court; and the Lord Lisle, one of the Lords Commissioners of the Great Seal, made a speech unto him according to the custom."—*Styles*, 452.

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been always, and yet am, of opinion that that part of the common law which is in English, hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be as confusedly different in their minds and judgments as the builders of Babel were in their languages, yet do think it vain, if not impious, to speak or understand more than their own mother-tongue."

Points decided by Chief Justice Glyn.

While in St. Stephen's Chapel[1] (where the House of Commons still met) political convulsions were happening which changed the aspect of the world, I do not find any more important point decided by the UPPER BENCH in Westminster Hall than the following:

"Action on the case for these words 'Helena (meaning the plaintiff) is a great witch.' Verdict for the plaintiff, with damages. Motion in arrest of judgment, and, by the unanimous opinion of all the justices, judgment was arrested, because the words only indicated that the plaintiff was a witch, without alleging that she had bewitched any person or any thing; and it not being punishable to be a witch without actually exercising the black art, it is not actionable simply to impute the power of witchcraft to another."[2]

Siderfin.

The next reporter of the UPPER BENCH was Siderfin, who, not publishing till after the Restoration, availed himself of the recovered privilege of using the Norman French. The following is a fair specimen of the decisions which he records:

1. St. Stephen's Chapel was a beautiful specimen of rich Decorated Gothic, its inner walls being covered with ancient frescoes relating to the Old and New Testament history; it was used as the House of Commons from 1547 till 1834, and its walls resounded to the eloquence of Chatham, Pitt, Fox, Burke, Grattan, and Canning.—*Hare's Walks in London*, vol. ii. p. 374.

2. Styles, ii. So it is held not actionable to say "Mary is a witch, for she has bewitched me," the context showing that he meant she had made the defendant fall in love with her: any more than to say "you are a thief, for you have stolen my heart;" or, "you have committed murder, for your beauty has for ever murdered my peace of mind."

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"L defendant dit ceux scandalous parols del plaintiff. 'He hath got M. N. with child.' Motion pour arrester le judgment pour ceo que ceux parols ne sont actionables sans alleging que M. N. ne feut sa feme. Mais per Glyn, C. J.: Les parols sont actionables car il ne gist dans la bouch del defendant a dire que le plaintiff et M. N. etoient baron et feme."[1]

On several occasions when writs of *habeas corpus* were moved for in the UPPER BENCH, Glyn intimated with some reluctance that, sitting there, he must declare the law as it had been handed down to him; whereupon (probably by his advice in the Council of State) the arbitrary acts deemed necessary were carried through by the agency of the "Major Generals"[2] and the "High Court of Justice."

Trial of Sindercome for conspiring to assassinate the Protector. Jan. 1658.

There was one treason trial before the UPPER BENCH while Glyn presided there; that of Sindercome, who had engaged in a plot to assassinate the Lord Protector. As he was certainly guilty of a crime revolting to all Englishmen, it was thought that a jury might safely be trusted with the case, instead of referring it to any extraordinary tribunal.

It is curious to a lawyer to observe that the indictment is framed after the precedents on stat. 25 Edward

1. Siderfin, ii. 17.

2. In 1655, after the disagreement with his first Parliament, and the rising under Penruddock, Cromwell devised the plan of dividing England into military districts, to be governed each by a major-general, responsible only to the Protector and Council. The major-generals were intrusted with the command of the militia, with the duties of putting down all attempted insurrections, carrying out the Protector's police regulations, and raising the ten per cent income tax imposed on royalists. The first appointed was Desborough, in May, 1655, for the six south-western counties; but the whole organization was officially announced in October. Including Wales, there were, in all, twelve districts. When Cromwell's second Parliament met, after a vigorous defence of his "poor little invention" he was obliged to abandon it. The House of Commons, on January 29, 1657, rejected, by 121 to 78, the second reading of a "Bill for the continuing and assessing of a tax for the paying and maintaining of the Militia forces in England and Wales," and thus deprived the Protector of the machinery by which the system of major-generals was maintained.—*Low and Pulling's Dict. of Eng. Hist.*

GENERAL MONK.

After Samuel Cooper.

III., for "compassing and imagining the death of the Lord Protector." The overt act charged was hiring a room in Westminster, fitting it with guns, harquebuses, and pistols charged with leaden bullets and iron slugs, to shoot, kill, and murder him. The facts being proved very clearly, Lord Chief Justice Glyn thus met the objection that in the statute of Edward III. there is no mention of a "Protector:" [1]

"By the common law, to compass or imagine the death of the chief magistrate of the land, by what name soever he was called, whether *Lord Protector* or otherwise, is high treason;

1. The title of Protector was first given to the governors appointed during the minority or incapacity of the King. It was borne by the Duke of Bedford during the minority of Henry VI. (or in his absence by the Duke of Gloucester), and by the Duke of York in 1454, and again in 1455 during Henry's illness; the Duke of Gloucester in 1483, and the Duke of Somerset from 1547 (January) to 1548 (October). The House of Lords, in answer to Humphrey, Duke of Gloucester, thus defined the meaning of the word: "It was advised and appointed by authority of the King assenting the three estates of this land, that ye, in absence of my lord your brother of Bedford, should be chief of the King's Council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of Protector and Defender, which importeth 'a personal duty of attendance to the actual defence of the land, as well against enemies outward if case required, as against rebels inward, if any were, granting you therewith certain power, the which is specified and contained in an act of the said Parliament, to endure as long as it liked the King.'" In the case of the Duke of Somerset he was in the instrument signed by the Privy Council on Jan. 31, 1547, said to be appointed because the good government of the realm, the safety of the King, and "the more certain and assured direction of his affairs" required "that some special man of the number aforesaid (the executors) should be preferred in name and place before the other, to whom, as to the head of the rest, all strangers and others might have access, and who for his virtue, wisdom, and experience in things, were meet and able to be a special remembrancer, and to keep a most certain account of all our proceedings." The title of Protector given to Cromwell (which may be compared with that of "*custodes libertatis Angliæ*," assumed by the Long Parliament) was chosen because it was not altogether strange to English ears, and, perhaps, also because it left the definite form of government, whether monarchical or republican, an open question. Cromwell's title was "Lord Protector of the Commonwealth of England, Scotland, and Ireland." It was given to him first in the Instrument of Government, and after his refusal to accept the crown, confirmed by the Petition and Advice.—*Low and Pulling's Dict. of Eng. Hist.*

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he being the spring of justice, in whose name all writs run, all commissions and grants are made: the statute 25 Edw. III. did only declare what the common law before was, and introduced no new law."

The jury, consisting of very respectable men, having, without difficulty, found a verdict of *guilty*, the ancient sentence in cases of treason, with all its frightful particulars, was pronounced; but this Sindercome disappointed, by taking poison the night before the day fixed for his execution.[1]

Glyn in parliament.

Glyn was member for Caernarvonshire in Cromwell's third parliament, and assisted the House of Commons with his legal advice. In the proceedings

Dec. 17, 1656.

against Nayler[2] the Quaker, he gave it as his opinion "that, upon a simple commitment by the House of Commons for a contempt, at the end of the session the party committed was entitled on a *habeas corpus* to be discharged; but if the House were to proceed judicially, and, after conviction, sentence him to imprisonment for a time certain, no inferior court could interfere to relieve him."[3]

The Chief Justice continued in high favor with Cromwell, and again made an effort to induce him to become King.[4] This having failed, and the House of

He is made a peer.

Lords being restored, he was made a peer,—he and his wife being called Lord and Lady Glyn.[5]

On the accession of Richard his patent as Chief

1. 5 St. Tr. 841–872.

2. James Nayler, a Quaker, born at Ardsley, in Yorkshire, about 1616. He became a soldier in the Parliament army, but quitted the service 1649, and in 1651 attached himself to George Fox. Soon afterwards, however, he pretended to inspiration, and committed such extravagances that the Parliament condemned him to be whipped, branded in the forehead, and have his tongue bored through with a hot iron. This barbarous sentence was carried into execution at Bristol, after which Nayler was removed to London, and confined in Bridewell, where he remained till 1660, when he was set at liberty. He died the same year, on his journey into Yorkshire.—*Cooper's Biog. Dict.*

3. Burton's Diary.

4. 3 Parl. Hist. 1498.

5. 3 Parl. Hist. 1518.

Justice of the Upper Bench was renewed, and he took his seat as a peer in the new parliament, but made no effort to ingratiate himself with the military usurpation which followed, foreseeing that it would be short-lived. On the restoration of the Rump[1] he again took his seat as member for Westminster, and affected a zeal for the Presbyterians, who were now the dominant party. CHAP. XII.

As Monk's[2] army approached from the north, he Jan. 1660.

1. "The nickname originated," says Isaac D'Israeli, "in derision on the expulsion of the majority of the Long Parliament by the usurping minority. The collector of 'The Rump Songs' tells us, 'If you ask who named it *Rump*, know 'twas so styled in an honest sheet of prayer called the Bloody Rump, written before the trial of our late sovereign; but the word obtained not universal notice till it flew from the mouth of Major-General Brown, at a public assembly in the days of Richard Cromwell.'" —*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.) 7.

2. George Monk, Duke of Albemarle, born in 1608, was the son of Sir Thomas Monk, of Merton, Devonshire. After fighting in the service of Holland, he returned to England about the age of thirty. In the civil war he bore arms for Charles I., and had acquired some reputation as an able officer when he was made prisoner at Nantwich in 1644 by the Roundheads, who confined him in the Tower of London more than a year. Having accepted a commission from the Parliament, he commanded a republican army in the north of Ireland between 1646 and 1650. He contributed to the victory of Cromwell at Dunbar in 1650, and the next year was left in Scotland as commander of an army, with which he speedily completed the reduction of that country. In 1653 the Government showed their confidence in his skill by selecting him to coöperate with Admiral Blake in a naval war against the Dutch. He commanded in the sea-fight where Van Tromp was defeated and killed. In 1654 he was successful in his efforts to enforce the will and authority of the Protector in Scotland. At the death of Oliver, in 1658, Monk proclaimed Richard Cromwell as his successor. When the officers of the army deposed Richard and restored the Long Parliament, he acquiesced, and retained command of the army in Scotland. The royalists and republicans solicited his aid in the impending crisis; but he kept all parties in suspense by his dissimulation or irresolution. About the beginning of 1660 he marched towards London, ostensibly to support the civil power against Lambert's army. Having cautiously removed from command those whom he distrusted, and prepared the way for the Restoration, he declared for a free Parliament, which soon assembled, amidst general joy and exultation. Charles II. was proclaimed King in May, 1660, and rewarded the services of Monk by creating him Duke of Albemarle. In 1666 Monk maintained his reputation in a great naval battle against the Dutch. He died in 1670. —*Thomas' Biog. Dict.*

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had a very shrewd guess at the intentions of "honest George," and thought it did not become him to act longer as a Judge under a usurped authority. He therefore sent in his resignation of the office of Chief Justice of the Upper Bench, and strenuously assisted in the recall of the exiled royal family. He zealously joined in the vote for the final dissolution of the Long Parliament; and, being returned to the Convention Parliament[1] as member for the county of Caernarvon,[2] he opposed the motion made by Sir Matthew Hale for requiring conditions from Charles II. In short, he was as loyal as any Cavalier. It seems rather strange that he now printed the speech he had made to induce Oliver to accept the crown, in the shape of a pamphlet entitled "Monarchy asserted to be the best, most ancient, and legal form of government: in a conference held at Whitehall with the Lord Protector and a Committee of Parliament, April, 1650." His object probably was to prove that he had always been a royalist in his heart. Wood asserts that, in spite of

He resigns his office and assists in the Restoration.

1. The Convention Parliament is the name given to the assembly which established the Restoration of Charles II. It assembled April 26, 1660, on the dissolution of the "Rump." It immediately accepted the Declaration of Breda, and issued an address inviting Charles to accept the crown.—*Low and Pulling's Dict. of Eng. Hist.*

The Convention Parliament, which restored King Charles II., met above a month before his return: the Lords by their own authority, and the Commons in pursuance of writs issued in the names of the keepers of the liberty of England by authority of Parliament. The said Parliament sat till the 29th of December, full seven months after the Restoration, and enacted many laws, several of which are still in force. But this was for the necessity of the King, which supersedes all law; for if they had not so met, it was morally impossible that the kingdom should have been settled in peace. And the first thing done after the King's return was to pass an act declaring this to be a good Parliament, notwithstanding the defect of the King's writs. It was at that time a great doubt among the lawyers whether even this healing act made it a good Parliament, and held by very many in the negative, though it seems to have been too nice a scruple. And yet, out of abundant caution, it was thought necessary to confirm its acts in the next Parliament, by statute 13 Car. II. c. 7 and c 14.—*Black. Com.*

2. 4 Parl. Hist. 8.

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this new-born zeal, Glyn was so obnoxious on account of what he had done when an ultra-republican, that he would have been excepted from the indemnity, and, although not directly concerned in the King's death, that he would have been brought to trial for high treason, like Sir Harry Vane[1] the Younger, if he had not given a bribe to Lord Chancellor Clarendon.[2] However this may be, the ex-Chief Justice was quickly as great a favorite with Charles II. as he had ever been with Oliver. He was not only pardoned, but created King's Ancient Sergeant; and, kneeling to kiss the hand of his legitimate sovereign, rose SIR JOHN GLYN, KNIGHT. He was again returned for Caernarvonshire on the dissolution of the Convention Parliament, and he supported all the measures of the Court with indiscriminate zeal. "He departed this mortal life in his house situated in Portugal Row, Lincoln's

He gains the favor of Charles II.

A.D. 1661.

His death.

1. Sir Henry Vane the Younger, often called Sir Harry Vane, born in 1612. He studied for a short time at Oxford, from which he went to Geneva, and returned home a zealous adversary of the liturgy and government of the Church of England. For the sake of religious liberty he emigrated in 1635 to Massachusetts. He was elected Governor of the colony in 1636. He offended the majority of the colony by his advocacy of universal toleration, and returned to England in 1637. In November, 1640, he became a member of the Long Parliament, in which he efficiently promoted the condemnation of the Earl of Strafford by evidence which he furnished. He found in his father's cabinet a memorandum of a council at which Strafford had proposed to employ the Irish army to reduce England to obedience. Vane was a leader of the Independents, and a friend of Milton. On the death of Pym (1643) the chief direction of civil affairs devolved on Vane. He disapproved the policy of the execution of the King, but expressed no opinion of its abstract justice. In February, 1649, he was appointed a member of the Council of State, and in the next month was placed at the head of the Naval Department. The efficiency and victories of the Navy are ascribed partly to his administrative talents. He opposed the usurpation of Cromwell, who, as his soldiers were dissolving the Parliament, in April, 1653, exclaimed, "The Lord deliver me from Sir Harry Vane!" Vane afterwards passed several years in retirement. At the Restoration he was excepted from the indemnity or act of amnesty. Having been confined in prison about two years, he was tried for treason in June, 1662, and convicted.—*Thomas' Biog. Dict.*

2. When the Athenæ came out, after Lord Chancellor Clarendon's death, his son sued the author for this calumny in the Vice-Chancellor s Court, and had judgment against him.

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Inn Fields, near London, on the 15th of November, 1666, and was buried with great solemnity (being accompanied to his grave by three heralds of arms) in his own vault under the altar in the chancel of the church of St. Margaret, within the city of Westminster."[1]

Jan. 1660. Newdigate, Chief Justice.

The office of Chief Justice of the UPPER BENCH having become vacant by the resignation of Glyn, although the supreme power really was in the hands of Monk, who was approaching London at the head of a large army, the Rump resolved that, for the due administration of the law, a new Chief Justice should

Jan. 17.

be created. Accordingly an order was made, both by the Council of State and by the House of Commons, to confer the office on SIR RICHARD NEWDIGATE; and, as he was regularly installed in it, I must take some notice of him, notwithstanding that the period for which he held it was very brief.

His professional career.

He was of a respectable Warwickshire family. He studied at Oxford, and he was called to the bar at Gray's Inn. I find no public notice of him till the

1. Athenæ, iii. 754.

The *Church of St. Margaret, Westminster*, is the especial church of the House of Commons, and, except the Abbey and St. Paul's, has the oldest foundation in London, having been founded by the Confessor and dedicated to Margaret, the martyr of Antioch, partly to divert to another building the crowds who inundated the Abbey church, and partly for the benefit of the multitudes of refugees in sanctuary. The church was rebuilt by Edward I., again was reëdified in the time of Edward IV. by Sir Thomas Billing and his wife Lady Mary, and it has been greatly modernized in the last century. Here the Fast Day Sermons were preached in the reign of Charles I.; and here both Houses of Parliament, with the Assembly of Divines and the Scots Commissioners, met Sept. 25, 1643, and were prepared by prayer for taking the Covenant. Here Hugh Peters, "the pulpit buffoon," denounced Charles as "the great Barabbas of Windsor," and urged Parliament to bring the King "to condign, speedy, and capital punishment."—*Hare's Walks in London*, vol. i. p. 391.

SIR HARRY VANE.

After Sir Peter Lely.

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year 1644, when he was appointed junior counsel for the Commonwealth in certain state prosecutions which were then going on, having Prynne and Bradshaw for his leaders. I suspect that he was a hard-headed special pleader, without display or pretension, who, delighted with the smell of old parchment, was indifferent about politics and literature; but who was complete master of his own craft, and who could be relied upon with absolute confidence for drawing an indictment or arguing a demurrer. He never was a member of the House of Commons, neither sitting in the Long Parliament, nor in any of the whimsical deliberative assemblies called either by Oliver or Richard.

The next we hear of him is as counsel for Glyn, Hollis, and the rest of the eleven members who were impeached for high treason because they opposed the "Self-denying Ordinance." He drew and signed their answer, which seems to have been a service of some danger, as Whitelock[1] greatly rejoiced in being released from it. The case never came to a hearing, the object being only to frighten the leading Presbyterians —not to hang them.[2] Although opposed to the Government, on account of his high reputation as a lawyer he was called upon, along with Pepys and Wyndham, to become a Judge.[3] They at first all declined the

He becomes a Judge under Cromwell.

1. Bulstrode Whitelocke, born in London, 1605. He sat in the Long Parliament, and was chairman of the committee for drawing up the charges against the Earl of Strafford. He adhered steadfastly to the republican party, but saved the royal library and collection of medals from being sold, and rendered other services to religion and learning in that turbulent period. In 1648 he became one of the commissioners of the Great Seal, but took no part in the proceedings against the King. In 1653 he went on an embassy to Sweden, where he concluded a treaty between the two countries. Whitelocke, though much in the confidence of Cromwell, assisted in displacing his son from the Protectorship. He survived the Restoration, and died at Chilton Park, in Wiltshire, Jan. 28, 1676.—*Cooper's Biog. Dict.*

2. Memorials, 259.

3. Whitelock, 591.

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honor, and, being summoned into the Protector's presence, expressed doubts as to his title, and scruples as to whether they could execute the law under him. Whereupon he said, in wrath, "If you gentlemen of the *red robe* will not execute the law, my *red coats* shall."[1] Out of dread of what might happen either to the state or to themselves, they are said all to have exclaimed, "Make us Judges; we will with pleasure be Judges."

His independent conduct.

Newdigate, in consequence, became a Puisne Justice of the Court of King's Bench, but was too honest long to retain the office. Presiding at the assizes for the county of York, when Colonel Halsey and several other royalists were tried before him for levying war against the Lord Protector, he observed that "although by 25 Ed. III. it was high treason to levy war against the King, he knew of no statute to extend this to a Lord Protector;" and directed the jury to acquit the prisoners.

He is dismissed. May 15, 1655.

In consequence, a mandate from the Protector in Council came to the Lord Commissioners of the Great Seal for a *supersedeas* to dismiss him.[2]

He returned to the bar, and practised with great success for some years.

Jan. 15, 1660.

He was restored to the Bench, as a Puisne Judge, when the Protectorate was abolished, and the government was again carried on in the names of the "Keepers of the Liberties of England."[3] Two days after, an ordinance passed by which he was constituted "Chief Justice of the Upper Bench." The object was, in the present crisis, to select an individual who could give no offence to any political party, and who must be acceptable to all from his acknowledged learning and integrity.

Jan. 17. He becomes Chief Justice.

1. According to another edition of the story he said, "If I cannot rule by *red gowns*, I will rule by *red coats*."

2. Whitelock, 625.

3. Whitelock, 678.

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He filled the office with entire satisfaction to the public till the 29th of May following, when, Charles II. making his triumphal entry into London amidst universal rejoicings, the Commonwealth Judges were considered as superseded, and ceased to act.

He is superseded at the Restoration, A.D. 1660.

The only case of much importance which came before him was that of Sir Robert Pye, who having been committed to the Tower by the House of Commons, his counsel moved for a *habeas corpus* to discharge him. Ludlow says, "So low were the affairs of the Parliament, and their authority so little regarded, even in Westminster Hall, that Judge Newdigate, demanding of the counsel for the Commonwealth what they had to say why it should not be granted, they answered that they had nothing to say against it; whereupon the Judge, though no enemy to monarchy, yet ashamed to see them so unfaithful to their trust, replied, that if they had nothing to say, he had; for that Sir Robert Pye being committed by an order of the Parliament, an inferior court could not discharge him."[1]

Sir Robert Pye's Case.

Newdigate had always borne his faculties so meekly that in the act immediately passed "for confirming all writs and process in the names of the Protectors, Oliver and Richard, or of the Keepers of the Liberties of England,"[2] it would have been graceful to have introduced a clause ratifying his appointment, or to have reconstituted him a Judge under the royal Great Seal now held by the Earl of Clarendon; but he was so little of an intriguer that he was removed from his

1. Ludlow, p. 321. The following is a different report of the case by Siderfin: "Sir Ro. Pye et M. Fincher esteant commit al Tower move per lour councel pro Hab. Corp. Et al jour del return ils appiert in court. Et fuit move per lour councel, que ils serra baile avant este long-temps imprison sans ascun prosecution fait vers eux. Et fuit dit per le Court que coment ils fuer' imprison pur suspicion de treason, que ils ne poent deny al eux baile in cas que le counsel del Commonwealth ne voil proceed vers eux; car est le birthright de chascun subject destre try acc. al Ley del terre."—*Sid.* 179.

2. 12 Car. II. c. 4.

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office with seeming disgrace, while his predecessor, Glyn, who had been instrumental in overturning the monarchy, and had behaved with the utmost harshness to many royalists, was immediately basking in the sunshine of Court favor.

Newdigate's career after his deposition.

He returned to the bar, and was a second time called to the degree of the coif, along with other sergeants, whose first writs had been issued by the "Lord Protector," or the "Keepers of the Liberties of England." When he saw that there was no chance of his being restored to the bench, and found that he was too old to wrangle with juniors trying to push themselves into notice, he retired into the country and amused himself with rural sports. Still he was not a keen politician, and he associated chiefly with the Cavaliers. By Colonel Halsey, whose life he had saved, he was introduced, in extreme old age, to Charles II., and he

His death.

was created a baronet. He died on the 14th of October, 1678. On his death-bed he perceived, by the signs of the times, that another revolution was approaching, although no one could then tell whether it would lead to a constitutional monarchy or to a re-establishment of the Commonwealth.[1]

1. See Noble's Family of Cromwell, vol. ii. On the east wall of Harefield Church, in Middlesex, is a monument to Sir Richard Newdigate, with the following inscription: "M. S. Ricardi Newdegate, servientis ad legem et baronetti, filii natu minimi Joannis Newdegate in agro Warwicensi militis. Natus est 17mo die Septembris A.D. 1602, et post tyrocinium in Academiâ Oxoniensi feliciter inchoatum juris municipalis studio in Graiorum hospitio reliquum temporis impendit; vitam degit animi fortitudine et mirâ æquitate spectabilem; summo candore et morum suavitate ornatus erat, nec minore probitate et prudentiâ. Deplorandis illis inter Carolum primum regem et ordines regni controversiis non omnino admiscuit, nec adduci potuit ut prædiorum regis vel illorum qui ob ejus parte steterunt emptione rem suam contaminaret; sed nobiliore quamvis minùs expedito ad divitias contendebat itinere; indefesso nempe studio et labore, summâque in arduis fori negotiis peritiâ et fide; quibus ita claruit, ut reempto hujus loci manerio, antiquæ suæ familiæ penè collapsæ, atque ex veteri Newdegatorum in Surria prosapia oriundæ, sedi plurima adjecit latirundia, quæ nullæ viduarum lachrymæ nec diri orphanorum gemitus infausto omine polluerunt."—*Lysons' Environs of London.*

Chief Justice Newdigate's epitaph.

CHAPTER XIII.

LIFE OF CHIEF JUSTICE OLIVER ST. JOHN.

CHAP. XIII. Glance at the character of Oliver St. John.

I MUST complete my list of Commonwealth Chief Justices with the name of OLIVER ST. JOHN, and I am well pleased with an opportunity of tracing his career and portraying his character. He has been noticed by historians, but he has not occupied the prominent position which is suitable to his merits or his crimes. With the exception of Oliver Cromwell, he had more influence on the events which marked the great constitutional struggle of the 17th century than any leader who appeared on the side of the Parliament. He was the first Englishman who ever seriously planned the establishment of a republican form of government in this country; he adhered resolutely to his purpose through life; and to attain it he took advantage, with consummate skill, of all events as they arose, foreseen and unforeseen, and of the various incongruous propensities and conflicting passions of mankind. When the ancient monarchy had been overturned, he resisted the establishment of tyranny under a new dynasty; and finally, rather than desert his principles, he was willing to spend his old age in exile and penury. At the same time, while he was a distinguished statesman he was an able lawyer,—not like many who have been called to the bar *pro formâ*, and having gone a single circuit have entirely abandoned their profession for politics, but, sounding all the depths of the law, he showed himself worthy to be trusted in the most important causes ever argued before an English tribunal; and he himself for years dis-

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tributed justice as a great and enlightened magistrate. There were, indeed, dark shades in his character, but these only render it the more worthy of our study.

Qu. as to his paternity?

It is a curious circumstance that there should be a dispute about the parentage of such a distinguished individual, who flourished so recently. Lord Clarendon,[1] who knew him intimately from his youth, who practised with him in the Court of King's Bench, who sat in the House of Commons with him, and who was both associated with him and opposed to him in party strife, repeatedly represents him as illegitimate; and states that he was "a natural son of the house of Bullingbrook."[2] Lord Bacon's account of his origin is equivocal—calling him "a gentleman as it seems of an ancient house and name."[3] By genealogists and heralds a legitimate pedigree is assigned to him, deducing his descent in the right male line from William St. John, who came in with the Conqueror; but some of them describe him as the son of Sir John St. John of Lydiard Tregose in Wiltshire, and others as the son of Sir Oliver St. John of Cagshoe in Bedfordshire, and they differ equally respecting his mother.[4] Lord Clarendon could hardly be mistaken on such a point, and I cannot help suspecting that the contrary assertions proceed from a desire to remove the bar sinister from the shield of a Chief Justice.

His education.

He was born in the latter end of the reign of Queen Elizabeth. To whomsoever he might be related, or by whomsoever begot, he had from nature wonderful power of intellect, and great pains were taken with his education. He received much early kindness from the Earl of Bedford, as well as the Earl of Bolingbroke; and he was brought up with the young

1. See Lives of the Lord Chancellors.
2. Rebellion, i. 327.
3. Works, 429.
4. See Noble's Memoirs of the Cromwell Family, ii. 16.

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Russells and St. Johns who were to support the greatness of these two noble houses.

Some say that he was educated at Catherine Hall, Cambridge, and others at Trinity College, Oxford; but the former statement is much the more probable.[1] Although we certainly know that he studied law at Lincoln's Inn, the exact dates of his entry, and call to the bar there, are not ascertained, from the defective state of the books of the Society at that period.[2]

He studies law at Lincoln's Inn.

We have ample notices of his appearance and habits soon after he was called to the bar, which describe him as thoughtful and moody, never partaking in youthful amusements, and seldom even allowing his features to relax into a smile. He read much and reflected more. Though a deep lawyer, and almost always to be found at his chambers when he was not attending the courts, he had nothing showy in his manner; and the attorneys ascribed his taciturnity to

1. Fasti, i. 453. At the request of a friend, Dr. Philip Bliss, Principal of St. Mary Hall, and Keeper of the Archives of the University, has, though in vain, made a diligent search for Oliver St. John's matriculation at Oxford. He thus politely prefaces a letter stating the result of his inquiries: "Lord Campbell has a claim on me, and all who have records in their custody, as his work may be considered a valuable contribution to our national biography." He then states, that, after a search of several days, the only St. Johns he can find matriculated from 1570 to 1614 are Oliver St. John of Trinity College, matriculated Dec. 20, 1577, son of John St. John, Esq., being the Lord Deputy of Ireland in 1616, and created Baron Tregoze in 1626, represented by Collins as having died in 1630, aged seventy; George St. John, the son of a knight, born in the county of Wilts, matriculated of Trinity College April 3, 1601, aged fifteen; and William St. John, the son of an esquire, born in the county of Hants, matriculated of Magdalene College May 8, 1600, aged sixteen. The matriculation records of Cambridge at this period are so defective, that the non-appearance of a name in them affords hardly any argument; and Wood's assertion, that our Oliver was of Catherine Hall, is strongly corroborated by the fact of his having been afterwards Chancellor of the University of Cambridge.

2. There are entries respecting an Oliver St. John (without any designation as to parentage) who is stated to have been admitted in 1630, and to have been called to the bar on the 30th of January, 1637(8); but this cannot refer to our Oliver, who must then have been forty years of age, and was well known as a lawyer and a politician.

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His want of success at the bar.

dulness, so that for a considerable time he had hardly any practice, either on the circuit or in London. But those who were intimately acquainted with him foresaw that he must one day attract general admiration.

He is a keen republican.

How his attention was first directed to politics is unknown, but it is certain that, from early youth, he was impressed with the notion that the Stuart family was systematically engaged in a plan to subvert public liberty; he saw the mischiefs arising from monopolies, which were still persisted in, notwithstanding the repeated promises to abolish them; and, above all, he was alarmed by the danger of parliaments being entirely discontinued, if the pretension should be acquiesced in of raising money by the exercise of the prerogative. It is supposed that, during a long vacation, he had taken a trip to Holland, and that it was from seeing with his own eyes the respect for property as well as personal liberty, and the comfortable and contented condition of all classes in that country he was first imbued with a taste for a republican form of government.

A.D. 1615.

He is prosecuted in the Star Chamber.

However this may be, it is certain that James I., in the interval of parliaments, having made an attempt to raise a tax under the name of a "Benevolence," or compulsory loan which was never to be repaid,—the amount exacted from the supposed lender being assessed by the borrower,—Oliver St. John, still a mere stripling, resolved to stir up resistance to it; and with this view he wrote and published "A Letter to the Mayor of Marlborough," citing the various statutes, from MAGNA CHARTA downwards, by which the imposition was condemned, and denouncing it as contrary to law, reason, and religion. Sir Francis Bacon was then the Attorney General, and impatient to grasp the Great Seal. That he might recommend himself to the Court, he prosecuted this indiscreet

boy in the Star Chamber, for a libel, and had him arrested while the suit was depending. When the hearing of the case came on, he made a speech which might well fix the hatred of tyranny in the breast of the young patriot: CHAP. XIII. April 29.

Bacon's speech at his prosecution.

"This gentleman," said he, "hath, upon advice, not suddenly by the slip of his tongue—not privately, or in a corner—but publicly—as it were to the face of the King's ministers, slandered and traduced the King our sovereign, the law of the land, the parliament, and infinite particulars of his Majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to interest the people in grief and discontent against the state; whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like that the poet speaks of—*Calamosque armare veneno*—a venomous dart that hath both iron and poison." He then at great length justified the Benevolence, and commented bitterly on the alleged libel. Thus he concluded: "Your menace, that 'if there were a Bollingbroke (or I cannot tell what), there were matter for him,' is a very seditious passage. You know well that, howsoever Henry IV.'s act by a secret providence of God prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day, wherewith it seems your dreams are troubled, I do not doubt his end would soon be upon the block, and that he would sooner have the ravens sit upon his head at London Bridge, than the crown at Westminster; and it is not your interlacing with your '*God forbid!*' that will salve these seditious speeches. If I should say to you, for example, 'Mr. Oliver St. John, if these times were like some former times of King Henry VIII., which *God forbid!* Mr. Oliver St. John, it would cost you your life!', I am sure you would not think this to be a gentle warning, but rather that I incensed the Court against you. And this I would wish both you and all to take heed of—how you speak seditious matter in parables, or by tropes, or examples. There is a thing in an indictment called an *innuendo;* you must beware how you beckon or make signs upon the King in a dangerous sense. As yet, you are graciously and mercifully dealt with."[1]

1. 2 St. Tr. 899. Bacon was so delighted with this speech, that he

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After various members of the court had followed in the same strain, supporting the legality of Benevolences, and denouncing as sowers of sedition and traitors all who questioned the right to levy them, a day was appointed for condemning the defendant to punishment, and then hearing him. This was looked forward to with great interest; and Lord Chancellor Ellesmere, who was dying, expressed a wish that the delivery of the sentence might be the last act of his official life. Fine, pillory, and perpetual imprisonment were expected by St. John without dismay.

The prosecution dropped.

But, before the day arrived, his prison doors were thrown open to him. He was told that Government dropped the prosecution, in the hope that indulgence would bring him to a right mind, and that the authoritative declaration of the law by the Court of Star Chamber would for ever after prevent attacks on the inalienable prerogatives of the Crown. The real motive for this apparent lenience was never explained. The proceeding had no effect on the obdurate mind of St. John but to make him more cautious. He never forgave the court the first assault, and, hoping before he died to see his country free, he resolved to bide his time.

A.D. 1628. He is a member of Charles I.'s third parliament.

His services to the popular cause.

He remained quiet during the rest of this reign and the commencement of the next, but he was returned to the House of Commons as member for the county of Bedford in Charles's third parliament, and thenceforth he was the life and soul of the country party. Still he made no display. He was nothing of a rhetorician; he hardly ever spoke in debate, and when he did open his mouth it was only to utter a few pithy sentences. But he met the popular leaders in consultation; he furnished them with precedents, he

sent a copy of it to the King, saying, "I persuade myself I spoke it with more life."

drew their addresses and resolutions, and he gave them discreet counsel, which they valued and followed. CHAP. XIII.

Although he had been mainly instrumental in carrying the "Petition of Right," and extorting the royal assent to it in due form, and the Court, aware of his influence, would have been well pleased to have punished him after the parliament was dissolved, it was found impossible to include him in the prosecution instituted against Sir John Eliot, Denzil Hollis, and other patriots, for making seditious speeches in parliament.

But he anxiously watched the expedients now adopted to introduce despotism and to reconcile men's minds to the loss of liberty. One of these was to circulate a book, entitled "A Proposition for his Majesty's Service, to bridle the Impertinence of Parliaments." This had been written by Sir Robert Dudley[1] at Florence, and recommended the establishment in England of Louis XI.'s system of fortifications, garrisons, passports, and taxes, whereby he had completely put down the meetings of the States General in France, and had rendered himself absolute in that kingdom. St. John having procured a copy of it showed it to the Earl of Bedford, Selden, and other friends, and was preparing an answer to it denouncing the profligate design which it disclosed, when the King and his min-

His action with regard to Dudley's book.

1. Sir Robert Dudley, son of Robert Earl of Leicester, by the Lady Douglas Sheffield, was born at Sheen, Surrey, 1573. His father, though he treated him as illegitimate, left him the bulk of his estate after the death of his uncle Ambrose. In 1594 he made a voyage to the South Seas. In 1605 he commenced a suit to prove his legitimacy; but the Countess Dowager of Leicester filed an information against him and others for a conspiracy, on which he went to Florence, where the Grand Duke appointed him Chamberlain to his wife, the Archduchess of Austria, sister to Ferdinand II. That Emperor created him a Duke of the Holy Roman Empire, on which he assumed the title of Duke of Northumberland. He drained the morass between Pisa and the sea, by which Leghorn became one of the first ports in the world. He died near Florence, September, 1639.—*Cooper's Biog. Dict.*

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isters, to ward off the disgrace that was about to be heaped upon them, pretended that they highly disapproved of the book, and actually preferred an information in the Star Chamber against the Earl of Bedford, Selden, and St. John for composing and publishing a seditious libel, entitled "A Proposition for his Majesty's Service, to bridle the Impertinence of Parliaments."

He is again prosecuted in the Star Chamber.

May 29, 1630. The Government's unworthy artifices to conceal its culpable plans.

This cause coming to a hearing, "a great presence of nobility being in court,"[1] the Attorney General with gravity opened the charge, and explained how the defendants were clearly guilty, because the book was libellous, and they had not only read it, but had shown it to each other, which, in point of law, amounted to a *publication;* whereas it was the duty of every one who met with a libel, without reading it through, immediately to lay it before the Secretary of State, or some other magistrate, so that its circulation might be stopped and the author brought to punishment. But, before Mr. Attorney had concluded his oration, the Lord Keeper Coventry, who was presiding, declared that the Queen was just brought to bed of a son (afterwards Charles II.); and that it having pleased the *Great Justice of Heaven* to bless his Majesty and his kingdom with a hopeful prince, the great joy and long expectation both of the King and kingdom, his most sacred Majesty directed the Court to proceed no further with this prosecution, but that the book should be burnt by the hands of the common hangman, as "seditious and scandalous both to his Majesty and the state."[2] Lord Clarendon says, "It being quickly evident that the prosecution would not be attended with success, they were all, shortly after, discharged."[3]

St. John's prosecution again dropped.

St. John felt no gratitude for being again released from impending peril, but vowed the destruction of a Government which could form such culpable plans,

1. 3 St. Tr. 397.

2. *Sic*, 3 St. Tr. 397.

3. Rebellion, i. 287.

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and resort to such unworthy artifices to conceal them. He was the confidential adviser of those who were prosecuted by the Government, but as yet he never appeared for any of them in court, and it was supposed that, although a very sensible man, he had no forensic talent.

A.D. 1637. He is counsel for Hampden in the case of Ship-money.

At last, Ship-money came up. He was counsel for Hampden, and he delivered the finest argument that had ever been heard in Westminster Hall. Having written a very learned opinion, in which he demonstrated the illegality of this imposition, and upon which payment of it had been refused,—having drawn the demurrer to the information filed in the Exchequer to recover the famous 20*s.*,—and evidently understanding the subject better than any man in England, Hampden placed entire confidence in his ability, notwithstanding his want of practice, and required him to plead as his leading counsel in the Court of Exchequer Chamber, where the case was to be heard before all the Judges.

His famous argument.

His argument, which lasted two whole days,[1] may now be perused with interest. We are chiefly struck with the calm, deliberate, business-like tone which pervades it. He always speaks respectfully of the just prerogatives of the Crown, and abstains from any triumph when he has exposed the fallacies of his antagonists; but, by a review of the principles of the English constitution, and of the statutes passed upon the subject from the Saxon times to the "Petition of Right," he demonstrates that, while an ordinary hered-

1. Although the length of speeches at the bar has certainly grown much of late years, it is some comfort to know that our ancestors sometimes suffered under greater tediousness than has ever been inflicted on the present generation. St. John, for the defendant, having taken two whole days of the time of the Court; Sir Edward Littleton, the Solicitor General, took for the Crown three; Mr. Holborne, for the defendant, took four; and Sir John Banks, the Attorney General, for the Crown, took three. We are not told how long the Judges spoke in giving their opinions; but, from their enormous lengthiness, they must have occupied many days.—3 St. Tr. 826–1315.

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itary revenue belonged to the King, extraordinary supplies could only be obtained by a parliamentary grant; that if any power of taxing the subject had ever belonged to the King, it had been solemnly renounced and abrogated; that the demand upon the county of Buckingham to furnish the means for fitting out a ship of war was an entirely novel invention; and that if such a demand could be made as often as the King should say it was necessary, the property of all his subjects was held at his pleasure. Although newspaper reporting was still unknown, there was then a communication of intelligence by means of coffee-houses, clubs, and news-letters, more rapid and general than we should at present think possible without the instrumentality of the press; and in a few weeks the fame of this speech was spread all over the kingdom, producing a general resistance to the tax, which had hitherto been resisted by Hampden alone. St. John, who had been little known beyond a small circle of private friends and political associates, was now celebrated by all mouths, and was regarded as the great legal patron of the oppressed. Lord Clarendon, after observing that "he had not been taken notice of for practice in Westminster Hall till he argued the case of Ship-money," is obliged to acknowledge, although with a sneer, that "this argument gave him much reputation, and called him into all courts and to all causes where the King's prerogative was most contested;" adding this very graphic little sketch of his appearance, manners, and habits: "He was a man reserved and of a dark and clouded countenance, very proud, and conversing with very few, and those men of his own humor and inclinations."[1]

Its effect.

A.D. 1637—1640.

Of course, his practice was now chiefly in the Star Chamber, which was attended with more *éclat* than

1. Rebellion, i. 287.

profit, and was by no means safe; for the advocate of a supposed libeller was regarded as "an accomplice after the fact." On the mere suspicion that he was concerned in drawing Burton's[1] answer, St. John's chambers in Lincoln's Inn were searched, and all his papers were carried off.[2]

His revolutionary views.

Hyde, Hollis, Whitelock, Hampden, and the other friends with whom St. John was associated, while they strongly condemned the system of government which had been established, were all attached to the monarchy, and, as yet, only wished that parliaments should be restored, and that abuses should be corrected. But at this era, if not earlier, it is certain that St. John himself had become a determined republican, and that he thought there was no security for freedom but in a democratic revolution. To this he looked forward with eagerness; he regretted, or he joyfully hailed, events as they seemed to retard or favor it; and he exerted all his own energy and prudence to insure the ultimate success of what he denominated the "good

1. Henry Burton, a Puritan divine, born 1579 at Birdsall, Yorkshire. He was educated at St. John's College, Cambridge, where he proceeded M.A., though he took his B.D. degree at Oxford. Afterwards he became tutor to the two sons of a certain noble knight, by whose interest he was made Clerk of the Closet to Prince Henry, during whose lifetime he composed a Treatise of Antichrist. After the death of Prince Henry he became Clerk of the Closet to Prince Charles, and at the age of thirty entered the ministry. After seven years' service, however, he was compelled to leave the Court in consequence of a dispute with the bishops. After this he obtained the rectory of St. Matthew, Friday Street, and employed himself in preaching and writing. He was summoned to the Star Chamber for printing without license a book against bowing at the name of Jesus; and Archbishop Laud prohibited him from preaching, though this sentence was afterwards set aside by the Court of Arches. He was summoned again for writing "The Baiting of the Pope's Bull." A sermon he preached on the 5th of November caused him to be exposed in the pillory June 14, 1637. He was also sentenced to lose both his ears, and to be imprisoned for life in Lancaster Jail, but Guernsey was afterwards selected as theplace of his confinement. In November, 1640, an order came from the Parliament for his release, and he was soon afterwards restored to his living. Died Jan. 7, 1648. He wrote many pamphlets, chiefly controversial.—*Cooper's Biog. Dict.*

2. 2 Strafford's Letters, 85.

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cause." His own personal sufferings from a violation of the law, although they preyed much upon his mind, had been slight, and could afford little apology for schemes which might introduce public confusion; but, before we condemn him with very great severity, we must recollect that parliaments had now been suspended for nearly eleven years, contrary to a statute requiring the King to call a parliament at least once a year,—that there was a fixed determination against ever calling another parliament in England,—that other taxes as well as Ship-money had been imposed and levied by the royal authority alone,—that a power was assumed of legislating on all subjects by royal proclamation,—that sentences of unprecedented cruelty had been inflicted upon those who stood up in defence of the constitution,—that this system of government had been established immediately upon the "Petition of Right" being added to the statute-book,—and, above all, that the following doctrine was openly avowed, and acted upon—"all statutes which encroach upon the essential prerogatives of the Crown are void." While monarchy existed, all remedy seemed hopeless.

His delight at the insurrection in Scotland.

For a long time, despotism (then called by the cant name of "Thurrough") was triumphant, and it would have been permanently established in England but for the indiscreet attempt to introduce episcopacy into Scotland. With rapture did St. John observe the insurrection in that country,—the march of a Scottish army to the south,—the flight of English troops before the invaders, and the necessity to which the King was reduced of again calling a parliament. He himself was returned for Totness.

A.D. 1640. His conduct in the "Short Parliament,"

He took little part in the debates of the "Short Parliament," which met on the 13th of April, 1640, and was dissolved on the 2d day of the following month.

He was at first alarmed by observing the loyalty and moderate disposition of the members, but was much reassured by the rashness and violence of the King's advisers. He inflamed the dispute respecting the priority to be given to supply, or to grievances; and he was suspected of being in collusion with Sir Harry Vane[1] the Elder, who, being then in the King's service as Secretary of State, prevented an accommodation which had nearly been brought about, by declaring that "no supply would be accepted if it were not in the proportion and manner proposed in his Majesty's message." On the day of the fatal dissolution, as we are informed by the noble historian, "it was observed that, in the countenances of those who had most opposed all that was desired by his Majesty, there was a marvellous serenity: nor could they conceal the joy of their hearts; for they knew enough of what was to come, to conclude that the King would be shortly compelled to call another parliament; and they were sure that so many unbiassed men would never be elected again." To show who the person was to whom he chiefly referred, he gives us this most interesting dialogue:

CHAP. XIII. ment," and his joy at its abrupt dissolution.

"Within an hour after the dissolving, Mr. Hyde met Mr. St. John, who had naturally a great cloud in his face, and very seldom was known to smile, but then had a most cheerful aspect, and seeing the other melancholic, as in truth he was from his heart, asked 'what troubled him?'—who answered, 'that the same that troubled him, he believed troubled most good men; that in such a time of confusion, so

Clarendon's description of his joy.

1. Sir Henry Vane, born in Kent 1589. He received the honor of knighthood from James I., who also made him Cofferer to Prince Charles; and on the accession of his royal master to the throne Vane was made a member of the Privy Council. He was also sent on some embassies; and when the King went to Scotland Sir Henry entertained him at Raby Castle, his seat in Durham. In 1639 he was made Treasurer of the Household, and soon after principal Secretary of State; but on joining in the prosecution of the Earl of Strafford he was removed from all his places. Died 1654.—*Cooper's Biog. Dict.*

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wise a parliament, which alone could have found remedy for it, was so unseasonably dismissed:' the other answered with a little warmth, 'that all was well, and that IT MUST BE WORSE BEFORE IT COULD BE BETTER, and that this parliament never could have done what was necessary to be done.'"[1]

Clarendon subsequently brings a charge of treachery against St. John, along with Pym and Hampden, for defeating the measures which ought to have been taken against the Scotch; but does not support it by any sufficient evidence.[2]

As St. John had foreseen, it soon became necessary to call another parliament; and the members returned to it were much more to his mind. He again represented the borough of Totness.

Nov. 1640. His conduct in the Long Parliament.

When the Long Parliament met, he still avoided oratorical display, but soon disclosed to the observing his "dark, ardent, and dangerous character."[3] He drew the Resolutions against Ship-money; and he was a member of the secret committee appointed to frame the articles of impeachment against the Earl of Strafford, along with Pym, Hampden, Hollis, Digby, Whitelock, Stroud, Earle, Selden, Maynard, Palmer, and Glyn.[4] Whitelock, distinguished for moderation, was put into the chair; but St. John was by far the most active of the whole in devising the charges, and in collecting evidence to support them.

Charles I., to save the life of his favorite, now contemplated a change of his ministers; and an arrangement was actually made for the introduction of the most influential of the popular leaders into office. The Earl of Bedford was to be Lord Treasurer; Pym, Chancellor of the Exchequer; Hollis, Secretary of

1. Rebellion, i. 218.

2. Rebellion, i. 228.

3. Hume. "Here was known the dark, ardent, and dangerous character of St. John."

4. Whitelock, 39.

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State; Lord Say, Master of the Wards; Hampden, tutor to the Prince of Wales; and Oliver St. John, Solicitor General. Lord Clarendon says that this last appointment was recommended by the Earl of Bedford, "which his Majesty readily consented to; hoping that, being a gentleman of honorable extraction (if he had been legitimate), he would have been very useful in the present exigence to support his service in the House of Commons, where his authority was then great; at least, that he would be ashamed ever to appear in any thing that might prove prejudicial to the Crown."[1]

A.D. 1641. He is made Solicitor General.

At this time there was a move in the law by the flight of Lord Keeper Finch,—when the Great Seal was delivered to Sir Edward Littleton; Bankes was made Chief Justice of the Common Pleas; and Herbert was promoted to be Attorney General. On the 29th day of January, 1641, a patent actually passed, constituting Oliver St. John Solicitor General; and he took the oath of allegiance, and the oath of office, by which he swore to give faithful advice to the King, to plead for him in all causes, and to suffer nothing to be done to his detriment. The Earl of Bedford, who had conducted the negotiation, dying soon after, it went off, and none of the other appointments took place. St. John, however, remained Solicitor General, "and he became immediately possessed of that office of great trust; and was so well qualified for it, at that time, by his fast and rooted malignity against the Government, that he lost no credit with his party, out of any apprehension or jealousy that he would change his side,—and he made good their confidence; not in the least degree abating his malignant spirit, or dissembling it; but with the same obstinacy opposed every thing which might advance the King's service

He continues hostile to the Government.

1. Rebellion, i. 326.

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when he was Solicitor, as ever he had done before.[1]

How such an office should be held by one in active and open hostility to the Government, it puzzles us, who live in quiet and regular times, to understand. The King remained at Whitehall for more than a twelvemonth after;—and during all this time there must have been business for a law officer to transact with the ministers of the Crown and with his colleague. Herbert, the Attorney General, was in the King's entire confidence, and was even made the instrument of his fatal folly in impeaching the five members of the House of Commons of high treason. St. John, their bosom friend and confederate, meanwhile was called "MR. SOLICITOR," was hurrying the King's minister to the scaffold, was plotting the measures which he thought best calculated to produce civil war, and looked forward to an Anglican republic as the consummation of his wishes.

His conduct as Solicitor.

He actually thirsted for the blood of Strafford; and he was resolved to gratify his appetite, in violation of all law, human and divine. Probably he had worked himself up into a delusive belief that he was actuated by a regard to the public good; but he seems to have been impelled by personal spite, arising from some unrevealed affront. The great delinquent who had deliberately planned the subversion of public liberty deserved to be severely punished, and some virtuous men were even of opinion that he ought to expiate his offence with his life; but all except St. John were for allowing him a fair trial. Had it not been for St.

His atrocious proceedings in the prosecution of Lord Strafford.

1. Rebellion, i. 327. He was immediately elected a Bencher of Lincoln's Inn: "At a Council held the 29th Jany 1640[1]. Att this Councell Oliver St Johns Esqr. his Mats Sollicitor genrall is called to the Bench and is to be Published at the Moote this night."

The following year he was Treasurer. It appears from the books of the Society that he attended the Councils regularly from this time till he was made Chief Justice in 1648.

OLIVER CROMWELL.

John he would have been acquitted, and an entirely different turn would have been given to the history of England.

He remains in the background during Strafford's impeachment.

While the prosecution was carried on according to the forms of an impeachment, he who was guiding it in all its details, and making the ostensible actors move as he directed them, found it more convenient to remain himself in the background; and Pym, Glyn, and Whitelock were much more conspicuous, both in addressing the Lords and in examining the witnesses; but when, after the defendant's masterly appeal to his judges against the attempt to take away his life by new and unknown laws, and the admirable argument of Lane,[1] his counsel, showing that none of the facts proved, or even alleged against him, amounted, in point of law, to high treason, he was on the point of being acquitted,—St. John thought it necessary to take the matter entirely into his own hands. He therefore required that the impeachment should be dropped, and that a bill of attainder[2] should be substi-

He requires the substitution of a bill of attainder

1. Sir Richard Lane, a native of Northamptonshire. He studied in the Middle Temple, was called to the bar, and in 1640 was counsel for the Earl of Strafford. In 1643 he was made Chief Baron of the Exchequer by Charles I., who also conferred on him the honor of knighthood. He was one of the Commissioners at the Treaty of Uxbridge, and had the Great Seal delivered to him on the death of Edward Lord Littleton. He died in Jersey 1650 or 1651. His reports in the Exchequer were printed in 1657.—*Cooper's Biog. Dict.*

2. Bill of Attainder was a legislative act of the two Houses, introduced and passed exactly like any other bill, and requiring the royal assent, which declared a person or persons attainted. Originally aimed against offenders who fled from justice, and analogous to the Bill of Pains and Penalties, it was soon perverted to secure a more certain and speedy destruction of political opponents than could be hoped from the impartiality or the routine of the law courts. No restriction was possible in such a mode of procedure. Evidence was usually heard, but not invariably; and even the presence of the accused was decided by the lawyers whom Thomas Cromwell consulted on the subject to be unnecessary, on the ground that there can be no authority superior to statute. The first recorded instance of its employment is in the violent banishment of the Despencers in 1321 by the Parliament of Westminster; an act which was held by Trussel,

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tuted for it, whereby the forms of law and the principles of justice might more easily be violated. Selden, who had supported the impeachment,—Holborne, who had so zealously assisted in arguing the question of Ship-money,—and several other enlightened lawyers of his party, strongly opposed this course; but, by sophistical speeches which St. John himself delivered, and by procuring others to excite the passions of the mob, he succeeded, with little difficulty, in carrying the bill through the House of Commons. How was he to obtain for it the consent of the Lords, who were ready to acquit on the articles of impeachment? He resorted to the ingenious expedient of making himself counsel for the bill at the bar of the Upper House,—

the Justice who delivered judgment on the younger Hugh, to have involved attainder. With the deposition of Edward II. the appearance of the more regular method of impeachment attests a less savage spirit in political parties, till the outbreak of the Rose wars in 1459. In that year hostilities broke out on an attempt of the Queen to have the Earl of Salisbury, the head of the Yorkist Nevilles, arrested. He completely defeated the force sent against him, and both sides rushed to arms. But the Lancastrians were better prepared; the Yorkist leaders had to fly the kingdom, and a parliament met at Coventry which attainted them in a body. Two years later, after the decisive victory of Towton, the Yorkists retaliated by a similar proscription of all the prominent Lancastrians. The new monarchy, which rose on the ruins of self-destroyed nobility, was strong enough to content itself as a rule with the ordinary methods of indictment and impeachment. But in 1539 the kinsmen of Reginald Pole, including his aged mother, the Countess of Salisbury, daughter of Edward IV., were cut off by bill of attainder, and the same fate overtook, in the following year, the disgraced minister Cromwell, condemned, by a singular retribution, without being heard in his own defence. Revenge in the one case, the preservation of the royal popularity in the other, demanded the employment of a procedure which could dispense with legal proof of guilt. The attainder of Strafford, however, in 1641 marks the triumph, not of a political faction, but of a constitutional theory. By the letter of the Statute of Treasons (1352), which condemned attempts on the King's life and honor only, the Earl was innocent; but the Parliament maintained that the spirit of the statute saw in the King the majesty of the state, and so, by implication, condemned all attempts to overthrow the existing constitution. The last instance in English history is that of Sir John Fenwick, attainted and executed in 1697 for participation in the Assassination Plot.—*Low and Pulling's Dict. of Eng. Hist.*

without having any opponent. For this purpose he proposed a conference between the two Houses, which was agreed to,—and he acted as the sole manager for the Commons. In this capacity he delivered a speech the most disgraceful ever heard before any tribunal professing to administer criminal justice. Knowing that there was to be no reply, he grossly misrepresented former precedents, and misconstrued the famous statute of Edward III. respecting treason, which, he said, was only binding on the inferior courts, but allowed parliament still to punish as treasonable any acts which they might think deserved the punishment of treason. But he felt that his reasoning on this point was weak, and that his only chance of success was by taking advantage of the odium under which his destined victim then labored. He thus alludes to the objection that he proposed to take away the life of the Earl of Strafford by an *ex post facto* law:

Extracts from his speech as counsel for the bill.

"But, my Lords, it hath often been inculcated, that 'lawmakers should imitate the Supreme Lawgiver, who commonly warns before he strikes: The law was promulged before the judgment of death for gathering the sticks: *no law, no transgression.*'"

He gives this answer of unparalleled atrocity,—which, if Milton had put it into the mouth of one of his fallen angels, would have been thought too diabolical:

"My Lords, the rule of law is, *Frustra legis auxilium invocet, qui in legem committit.*[1] The proper law for such a case is the *lex talionis:*[2] he that would not have had others have a law, why should he have any himself? Why should not that be done to him that himself would have done to others? It is true we give law to hares and deers, because they be beasts of chase; it was never accounted either cruelty or foul play

1. "He calls in vain upon the assistance of the law, who fights against law."

2. "The law of retaliation."

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to knock foxes and wolves on the head as they can be found, because these be beasts of prey. The warrener sets traps for polecats and other vermin for preservation of the warren. Proceeding by bill, every man is guided by his conscience, and, without any evidence at all being given, may award the deserved punishment."

"Upon the close of Master St. John's speech," says the old report, "the House adjourned, nor was there one word spoken but by Master St. John—only the Lord Lieutenant, by a dumb eloquence, *manibus ad sidera tensis*,[1] held up his hands towards heaven and made his reply with a deep silence."

The following day Strafford petitioned to be heard by his counsel, but on the suggestion of St. John he was told that the House of Commons must have the last word. Upon a division the bill was carried by a majority of twenty-six to ten; and Charles being induced, against his conscience and his vow, to give it the royal assent, the vengeance of St. John was satiated.[2]

His vengeance satiated. May 12.

His bill against the Church.

He is said to have "contracted an implacable displeasure against the Church party, from the company he kept."[3] To gratify this he now drew, with his own hand, a bill "for the utter eradication of bishops, deans, and chapters; with all chancellors, officials, and all officers and other persons belonging to either of them." He would not, however, move it himself, but, *more suo*,[4] prevailed on a foolish baronet called Sir Edward Deering, a man of levity and vanity, easily led by a little flattery, to present it to the House,—supplying him with an apt quotation:

> "Cuncta prius tentanda, sed immedicabile vulnus
> Ense recidendum est, ne pars sincera trahatur."[5]

1. "His hands stretched towards the stars."
2. 3 St. Tr. 1382–1536; Rebellion, i. 360.
3. Rebellion, i. 288.
4. "According to his custom."
5. "All other means must first be tried, but the incurable wound must be cut out, lest the unaffected part be affected."

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The mover spoke from the gallery, and, as he thought, with great effect; but a strong objection was made to the first reading of the bill, and the real author of it was obliged to start up in its defence. He disingenuously argued, "that the title of the bill, although disapproved of, was no argument against reading it a first time; that the title might be false, and that this bill, for aught any one knew to the contrary, or at least for aught he and many others knew, might contain enactments for establishing bishops, and granting other immunities to the Church." The bill was read a first time,—and, being afterwards altered into a bill to prevent bishops from sitting in the House of Lords, or holding any secular office, it passed both Houses, and received the royal assent.[1]

His arguments in favor of the bill.

Open hostilities being at last contemplated, Mr. Solicitor drew another bill "for the settling the militia of the kingdom, both by sea and land, in such persons as Parliament should nominate," and got it brought forward by Sir Arthur Haslerig, whom he was said "to use as Noah did the dove out of the ark, to try what footing there was." The House seemed inclined to throw it out, as "a matter of sedition," without suffering it to be read, not without some reproach to the person who moved it, till the King's Solicitor declared that "he thought that passion and dislike very unseasonable before the bill was read,—that it was the highest privilege of every member to make any motion which in his conscience he thought advantageous for the kingdom, — that something was necessary to be done for regulating the command of the militia, which as yet was left undetermined by the law, and, if the power were too great for any subject, in a subsequent stage of the bill it might be devolved upon the Crown." The bill was therefore read a first time. On a subse-

His bill for transferring military power to the Parliament.

1. Rebellion, i. 368.

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quent occasion the measure was strongly opposed by Mr. Hyde, who contended "that the power of the militia unquestionably resided in the King, along with the right of making war and peace; and that, as no defect of power had ever appeared under the old law, we might reasonably expect the same security for the future:" with which, he says, "the House seemed well pleased, till the King's Solicitor, and the only man in the House of his learned counsel, stood up and said—

His artifice and its failure.

'I should be right glad if there were such power in the King (whose rights as his sworn servant I am bound to defend). The gentleman who spoke last seems to imagine so; but, for my part, I know there is not: the question is not about taking away power from the King which is vested in him (which it would be my duty to oppose): we have to inquire whether there be such a power in him, or anywhere else, as is necessary for the preservation of the King and the people. I take upon me with confidence to affirm that there is a defect of such power, which Parliament ought to supply.'" But he failed for once; his artifice was too transparent, and he so far shocked the remaining loyalty of the House that the bill was allowed to drop, although it was afterwards renewed in the shape of an ordinance when the King's assent was not required for the making of laws.[1]

A.D. 1642. The Solicitor General quiets all scruples respecting the oath of allegiance.

In the beginning of the following year, Charles leaving Whitehall and going to the north of England to prepare for war, the parliamentary leaders took measures for having the train-bands[2] called out in the

1. Rebellion, i. 430, 514, 516, 604. Clarendon adds, "The Solicitor General, who had obliged himself by a particular oath to defend his Majesty's rights, and in no case to be of counsel or give advice to the prejudice of the Crown, was the chief instrument to devise and contrive all the propositions and acts of undutifulness towards him." (Pp. 499, 500.)

2. Train-bands, or trained bands, instituted in the reign of James I., were bodies of urban militia, which combined with the principle of the

City of London, and for securing some garrisons in the provinces. Notwithstanding an ordinance of the two Houses for these purposes, several of the party had qualms about the oath of allegiance which they had taken, but Mr. Solicitor showed them that these proceedings were perfectly legal and constitutional: CHAP. XIII.

"He argued, that the Lords and Commons, in case of the King's minority, sickness, or absence, had done the same in other times: as when Henry III. died, and his son Edward I. was in the Holy Land, and came not home in almost two years after his father's death, yet, in the mean time, the Lords and Commons appointed lieutenants of the several counties, and made several ordinances which are in force at this day. So are the ordinances made by them in the minority of Henry VI., and the ordinances in the minority of Edward VI., and in other times. That the King was now absent, and having called his parliament at Westminster, was himself gone as far from them as York, and had, before he came thither and since, appeared with warlike forces about him to the terror of the parliament; and that they had not the least purpose or intention of any war with the King, but to arm themselves for their necessary defence."

On these grounds the Parliament passed a vote that "the ordinance for the safeguard of the kingdom is no whit prejudicial to the oath of allegiance, but is to be obeyed as other fundamental laws, and that the King's commands for lieutenancy over the respective counties, issued without the concurrence of the two Houses, are illegal and void."

St. John, to set a good example, himself accepted a commission as deputy lieutenant from the Parliament, and began to assist in raising and drilling men; but His short taste of military life.

"fyrd" a large volunteer element. They proved, however, exceedingly turbulent, especially in London, and, having espoused the side of the Parliament during the Great Rebellion, were abolished after the Restoration.—*Low and Pulling's Dict. of Eng. Hist.*

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he soon found that he had not much military genius, and that he could better serve the "good cause" by continuing to wear the gown.[1]

He was placed upon the Committee of the House of Commons which, during the adjournment of the House, had all power committed to it, and which, in truth, constituted the executive government. After the death of Pym, who was the first chairman, St. John had the greatest influence, and was most looked up to by the public, till the *prestige* of military glory gave the ascendency to Cromwell.

May, 1642. His proposal for supplying the Parliament with a Great Seal.

The parliamentary party had been thrown into a state of consternation by the flight of Lord Keeper Littleton to York with the Great Seal. The most superstitious veneration was felt by all lawyers except St. John for this bawble, and, for want of it, the administration of justice had been suspended during a twelvemonth without any expedient having been proposed to supply its place. In the following Hilary Term came out a satirical pamphlet, entitled "St. Hilary's Tears, shed upon all Professors of the Law,

A.D. 1643.

from the Judge to the Pettifogger." At last Mr. Solicitor proposed an ordinance for making a new Great Seal in exact imitation of the one in possession of his Majesty, so that by affixing it to their acts they might continue to carry on the government in the King's name. This was violently opposed upon the clause in the statute 25 Edward III. which enacts that "to counterfeit the King's Great Seal shall be high treason;" and, although it was carried through the House of Commons, the ordinance was rejected by the Lords, who thought that such a step would be an entire renunciation of their allegiance.

He is superseded as Solicitor General by the King,

The King, judging it full time to prevent the person who now openly attempted the subversion of the

1. Whitelock, 57, 59.

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monarchy from appearing to be clothed with any authority by the Crown, caused a patent to pass under the Great Seal, at Oxford, superseding Oliver St. John as Solicitor General, and appointing Sir Thomas Gardiner, the ejected Recorder of London, in his stead.[1] This was met by an ordinance which made void all patents that had passed or should pass the Great Seal in the King's possession "since the time it ceased to attend the parliament;" and St. John continued to style himself "Mr. Solicitor" till he was raised to be Attorney General. Meanwhile he carried a resolution of the House of Commons, independently of the Lords, that a new Great Seal should be made; and, by throwing out hints that their Lordships might be voted useless, he prevailed upon them to agree to an ordinance for using this new Great Seal, and for delivering it to six commissioners—two peers and four commoners—who were to exercise all the powers of Lord Chancellor. He himself, with his designation of "Solicitor General to the King's Majesty," was nominated the first of the commissioners who represented the Commons. Accordingly, he was sworn in with much solemnity, taking the oath of office in the ancient form, and again swearing "to be faithful, and bear true allegiance, to his Majesty King Charles I., and him to defend from all treasons and traitorous conspiracies whatsoever."

but retains the title. Oct. 30.

November. He becomes a Lord Commissioner of the Great Seal.

In Hilary Term, 1644, he took his seat in the Court of Chancery as a Lord Commissioner, and continued to hold this employment for nearly three years, till he was obliged to resign it in consequence of Cromwell's "Self-denying Ordinance," by which all members of parliament except himself were disqualified for offices, civil or military. St. John received 1,000*l.* for his

A.D. 1644.

1. Dugd. Chron. Ser.

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trouble, together with the privilege of ever after sitting within the bar in all courts of justice.[1]

Jan. 1645. He is a commissioner for the Parliament at the Treaty of Uxbridge.

When the conferences were to be held at Uxbridge, St. John was named one of the parliamentary commissioners; but a great difficulty arose about his designation in the commission and safe-conduct. He had been at first styled "Solicitor General to the King." Charles acquiesced, but in his own commission he named Sir Thomas Gardiner, and described him as "our Solicitor General." To this and similar designations of royal commissioners the Parliament strongly objected, as giving effect to patents under the Great Seal since it had been carried off by Lord Keeper Littleton. At last it was agreed that the commissioners on both sides should be enumerated simply by their Christian and surnames. "Plain Oliver St. John" (as he was now called) took an active part in the conferences which followed, and the command of the militia still being the great bone of contention, he strenuously denied that it belonged constitutionally to the King. While some of his colleagues sincerely tried to bring about an accommodation, he inflamed the animosity between the contending parties, and caused a rupture which proved the prelude to the King's imprisonment and death.[2]

He is made Attorney General.

To reward him for his zeal, the office of Attorney General was conferred upon him by the Parliament, although it was still legally held by Sir Edward Herbert, who had been appointed to it before the troubles began, and had always followed the King's headquarters.[3]

1. Whitelock, 71, 77; Rebellion, ii. 610, 611; Lives of Chancellors, vol. iii. ch. lxviii.

2. Rebellion, ii. 890. Lord Clarendon represents St. John as a spy upon the rightly disposed commissioners, and says, "though most of the rest did heartily desire a peace, even upon any terms, yet none of them had the courage to avow the receding from the most extravagant demands."

3. Whitelock, 88.

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The decline of his influence.

After the royalists had been completely worsted, the political consequence of St. John lamentably declined, and he felt his position very uncomfortable. He had professed himself a Presbyterian, he had sat as a member in the famous Assembly of Divines at Westminster,[1] and he had subscribed the Solemn League and Covenant.[2] But the Presbyterians show-

1. The Westminster Assembly was convoked by order of the Long Parliament in the summer of 1643, to consider the condition of the Church, as "many things in its liturgy, discipline, and government required further and more perfect reformation." It met on July 1, and, after a sermon from Dr. Twiss, the Prolocutor, began its sessions in Henry VII.'s Chapel, whence it afterwards removed to the Jerusalem Chamber. The Assembly consisted of both lay and clerical members, and was never very numerous—about sixty attending its ordinary sittings. The great majority of the Assembly were inclined to Presbyterianism, and many of them profoundly convinced of its divine right. This party was further strengthened when political necessities involved a close alliance with the Scots, and compelled the Assembly to accept the Solemn League and Covenant, and to add to its numbers Henderson, Baillie, and other commissioners of the General Assembly of the Scottish Church. After 1645 Charles Herle was its Prolocutor. The debates of the Assembly extended over nearly all possible subjects of theology. From July, 1643, to the summer of 1647 it pursued its way uninterrupted. It spent much time on the revision of the Articles, which involved endless theological discussion. It superseded the Prayer Book by the *Directory of Public Worship*. It did its best to establish a rigid Presbyterial organization, slightly modified by a few insignificant concessions to the Independents, and, pending its establishment, it took upon itself the function of ordaining ministers. It drew up the celebrated *Westminster Confession of Faith*, with the Longer and Shorter Catechisms, which have since remained the authoritative expositions of British Presbyterianism. Possessing no direct power, it was necessarily somewhat dependent on the Parliament to which it owed its existence; though this did not prevent the active section exalting the spiritual power so highly as to call down upon the Assembly the threat of an action for *præmunire*. After the summer of 1647, the retirement of the Scots marked the ending of the main business of the Assembly. But up to the spring in 1652 a small number of its divines continued to meet for the purpose of examining candidates for ordination, until Cromwell's dissolution of the Rump led to their silent disappearance without formal dismissal. Despite their narrowness and bigotry, the members of the Westminster Assembly had shown much learning and zeal, and some moderation, in a critical and arduous duty.—*Low and Pulling's Dict. of Eng. Hist.*

2. In 1643, when the English Parliament sought Scotch aid, the Scotch demanded that the mutual engagements of the two nations should be confirmed by a pact to which both nations should be sworn.

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ing a strong hankering after monarchy if they could have a "Covenanted King," he was now more inclined to join the Independents. Unfortunately, however, the leaders of this sect were the Lord General Cromwell and his brother officers, who slighted all *pequins*, and were determined to rule by the sword.

A.D. 1647.

For two or three years St. John acted irresolutely, —waiting for events, and hoping that Cromwell might fall in the field, or might lose his ascendency,—when he expected to be himself acknowledged the head of a republic. Such ambitious projects melted away as the power of the great military chief was consolidated; and the aspiring democrat, who had hoped to make himself greater than any King of England, saw that he must either retire from public life altogether, or consent to act a very subordinate part under a military dictator. The latter course he preferred: *first*, because, with all his high qualities, he labored under a sordid passion for money; and *secondly*, because he wished still to keep up a connection with political partisans who might one day rally round him. Not being able successfully to oppose Cromwell, he deemed it more prudent to appear to yield to him submissively, and entirely to disarm his jealousy. He therefore henceforth contented himself with assiduously performing the functions of a law officer of the Crown, prosecuting, in the King's name, those who too indiscreetly testified their zeal for the King's authority. The most difficult task imposed upon him was to punish Judge Jenkins,[1] the honest Welshman who resolutely

He decides to act a subordinate part.

Accordingly the *Solemn League and Covenant* was drawn up by Henderson, amended by Vane, adopted by the Westminster Assembly, passed by the Parliament, and ordered to be subscribed and sworn to by the nation.—*Low and Pulling's Dict. of Eng. Hist.*

1. David Jenkins, born at Hensol, Glamorganshire, about 1586. After studying at Oxford, he was called to the bar, and made a Welsh judge. When the rebellion broke out he was taken up and sent to the Tower, from whence he was removed to Newgate, impeached of treason,

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set at defiance the parliamentary Commissioners of the Great Seal, and would acknowledge no authority which did not emanate from the King.[1]

He wishes to become a Judge.

At last Mr. Attorney St. John became very tired of such work, which he thought sadly unsuitable for one fit to govern an empire. His only resource was to go upon the bench, where he would be free from any present annoyance, and might quietly watch the political horizon. The administration of justice had gone on regularly in the King's name, two puisne judges sitting in each of the superior common-law courts, but the chiefships had been several years vacant. Heath, Chief Justice of the King's Bench, had been removed by an ordinance; Banks, the Chief Justice of the Common Pleas, died in 1644; and Lane, whom Charles had made Chief Baron at Oxford, had accepted the titular office of his Lord Keeper. St. John represented to Cromwell that, as the negotiations with the King, who was a prisoner in the Isle of Wight, might now be considered for ever closed, and a vote against addressing him or further recognizing his authority was in contemplation, it would be fit, with a view to the measures which might be necessary to extinguish the monarchy in form as well as substance, that the high magistracies, which the people had been in the habit of regarding with reverence, should be occupied by men entirely to be confided in. At the same time he hinted that, although he was known to prefer politics to law, he might be prevailed

A.D. 1648.

October. He brings the matter before Cromwell.

and brought to the bar of the House of Commons, where he refused to kneel, and called the place "a den of thieves." The assembly, in a fit of rage, were about to sentence him to be hanged, upon which he said that he would suffer with Magna Charta under one arm, and the Bible under the other. At last he was sent back to prison, where he remained till 1656. He died at Cowbridge, Glamorganshire, Dec. 6, 1667. His works were printed in a small volume in 1648; besides which he wrote "Reports adjudged in the Exchequer Chamber," 1661; and again 1777.—*Cooper's Biog. Dict.*

1. Whitelock, 255; 4 St. Tr. 942.

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upon, for the public good, to submit for a time to the dull and irksome business of Westminster Hall.

Cromwell acquiesces in his proposal.

Cromwell, well pleased with the prospect of finding harmless employment for such a restless spirit, entirely acquiesced in the proposal, and offered that he should be made Chief Justice of the King's Bench. This dignity he declined under the pretext of humility, but probably from the apprehension that it was very likely, from engaging him in all state trials, to bring him into frequent collision with the ruling powers. With his concurrence, it was arranged that Rolle, who was a profound lawyer and nothing else, should hold the highest office; that Sergeant Wilde, who had been an active member of the Long Parliament, should be appointed Chief Baron of the Exchequer; and that he himself should have the "cushion of the Common Pleas," which, both for ease and profit, still had great charms in the eyes of calculating lawyers.

Nov. 15.

An ordinance for this purpose having passed, the new Chief Baron was first sworn in, as he was already a Sergeant; and thus Lord Commissioner Whitelock began a long address to him:

Address to Sergeant Wilde.

"Mr. Sergeant Wilde,—The Lords and Commons in parliament taking notice of the great inconvenience in the course of justice for want of the proper and usual number of Judges in the High Courts at Westminster, whereby is occasioned delay, and both suitors and others are the less satisfied, and being desirous and careful that justice may be administered *more Majorum*,[1] and equal right done to all men according to the custom of England, they have resolved to fill up the benches with persons of approved fidelity and affection to the public, and of piety, learning, and integrity; and having found, by long experience among themselves, that you, Mr. Sergeant Wilde, are a person thus qualified, and very well deserving from the Commonwealth, they have thought fit to place you in one of the highest seats of justice, and have ordained you to be Lord Chief Baron of this Court."

1. "After the custom of our ancestors."

A call of Sergeants immediately followed, St. John being at the top of the list; and thus the Lord Keeper began his address to them: CHAP. XIII. Nov. 18.

"Mr. Sergeant St. John, and the rest of you gentlemen who have received writs to be Sergeants-at-law,—It hath pleased the Parliament, in commanding these writs to issue forth, to manifest their constant resolution to continue and maintain the old settled form of government and laws of the kingdom, and to provide for the supply of the High Courts of Justice with the usual number of Judges, and likewise to bestow a particular mark of favor upon you as eminent members of our profession." St. John made a Sergeant.

Three days afterwards, Mr. Sergeant St. John was sworn in, and took his seat as Chief Justice of the Common Pleas; but there was no speechifying on this occasion.[1] It would have been very curious to have had an authentic exposition of his sentiments when such a great crisis was impending. Chief Justice of the Common Pleas.

He was scarcely warm in his seat, which he expected to yield him entire repose, when the resolution was taken to exhibit the sovereign holding up his hand as a culprit at the bar of a criminal court. It has generally been said that St. John disapproved of this proceeding—which is probable enough—from his conviction that it must lead to the permanent supremacy of Cromwell—although not from any scruples about royal irresponsibility, or the sacredness of an anointed head. But I find no contemporary statement of anything that passed between him and those who had vowed Charles's death, till the bloody deed was done. I believe that he, and all the other common-law judges, refused to allow their names to be introduced among those who were to constitute the "High Court of Justice," and, if they were asked to attend as *assessors*, they had refused, for none of them were present at the trial in any capacity.

1. Whitelock, 348–356.

CHAP. XIII. A.D. 1649. His conduct on the execution of Charles I.

On the 31st of January, 1649, Westminster Hall was in a state of dreadful perplexity. Lawyers are so much under the dominion of form, that all writs and commissions having hitherto issued in the name of "CHARLES I. by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith," etc., to whom the oath of allegiance continued to be taken, the Judges—who believed themselves to be loyal men—had continued to hold their offices, and, receiving their fees and salary, to decide without much scruple all civil and criminal cases which came before them. But when Charles I. had actually been beheaded, an ordinance had passed to make the proclamation of Charles II. high treason, and the House of Lords had been abolished as useless, the delusion could be fostered no longer. Six of them—Bacon, Browne, Bedingfield, Creswell, Trevor, and Atkins—refused to sit again; but the other six—Rolle, St. John, Wilde, Jermyn, Pheasant, and Yates—sent in their adhesion, "provided that by act of the Commons the fundamental laws be not abolished." Accordingly new commissions were made out to them under the Great Seal of the Commonwealth, and there was an "order for altering the Judges' oaths—formerly in *the name of the King*, now to be *in the people*."[1] The others confined themselves to their judicial duties, but St. John became a member of the executive council, and was deeply absorbed in politics. He actually continued Chief Justice of the Common Pleas till the Restoration, a period of twelve years; but I do not discover the report of any case decided by him during this long interval, and I suspect that, leaving the business of the court to be done by his juniors, his thoughts were chiefly occupied with considering how the overwhelming

He becomes a member of the executive council.

1. Whitelock, 378.

power of Cromwell might be curtailed, and how his own might be advanced. CHAP. XIII.

When an army was sent to invade Scotland, where the authority of Charles II. as a "Covenanted King" was recognized, and Fairfax, who was himself a sincere Presbyterian, refused to command it, St. John was one of the committee deputed to remove his scruples, and seems earnestly to have tried to succeed;—while others played the game of Cromwell, who was now intriguing to be appointed generalissimo of all the parliamentary forces. Whitelock has left a very ample report of the conference on this occasion: June 1650. His conference with Fairfax respecting the command of the army.

Lord General Fairfax: "I need not make to you, or to any that know me, any protestation of the continuance of my duty and affection to the Parliament, and my readiness to serve them in anything wherein my conscience will give me leave." *St. John:* "I pray, my Lord, be pleased to acquaint us with your particular objections against this journey." *Lord General:* "You will give me leave, then, with all freeness to say to you, that I think it doubtful whether we have a just cause to make an invasion upon Scotland. With them we are joined in the national league and covenant." *St. John:* "But, my Lord, that league and covenant was first broken by themselves, and so dissolved as to us."

All this reasoning was vain; and Cromwell, gaining his object, fought the battles of Dunbar and of Worcester, and made himself Lord Protector.

Meanwhile he wished to get St. John out of the way, and an ordinance passed the House of Commons appointing him ambassador to Holland. This mission was exceedingly distasteful to the Lord Chief Justice; for it was not only to remove him from the scene where, on any unlucky chance happening to Cromwell, he hoped to act the first part, but he was to be exposed to great personal danger. In Holland, although a republican form of government existed there, the cause of the English Commonwealth was very unpopular; He is appointed ambassador to Holland. A.D. 1651.

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and Dorislaus,[1] their first ambassador, had been assassinated at the Hague without any sincere effort being made to bring his murderers to justice. A hope was entertained that on the death of William, the second Prince of Orange, who had married a daughter of Charles I., there might be a more friendly feeling towards English republicans. But Ascham,[2] another parliamentary ambassador, had lately been assassinated by the royalists at Madrid; and St. John, dreading a similar fate, presented a petition that he might be excused, alleging his important judicial duties at home, his infirm health, and the insalubrity of the climate. But his timidity was derided, and upon a division his petition was dismissed by a large majority.[3] He was allowed 10,000*l.* to pay his expenses, and forty attendants to protect him.

April. Insult to Chief Justice St. John in Holland.

Accordingly he made his public entry into the Hague, with a retinue and parade becoming the representative of a powerful nation; but the populace saluted him with groans and hisses; and the royalists were not only resolved to insult him on every occasion,

1. Isaac Dorislaus, a Dutchman, who came to England, and was appointed by Fulke Lord Brooke to read lectures on history at Cambridge; but avowing republican principles, Dr. Cosin, the Vice-Chancellor, silenced him. Afterwards he became judge-advocate in the King's army, in the expedition against the Scotch, but quitted his Majesty's service for that of the Parliament, and assisted in drawing up and managing the charge against Charles I. In 1649 he was sent ambassador to the Hague, where he was stabbed on the 2d of May in the same year, by some exiled royalists. The Parliament caused his body to be brought to England, and interred in Westminster Abbey, from whence it was taken at the Restoration, and buried in St. Margaret's churchyard.—*Cooper's Biog. Dict.*

2. Anthony Ascham, born at Boston, Lincolnshire, was educated at Eton and King's College, Cambridge. At the beginning of the rebellion he joined the Presbyterians, and became a member of the Long Parliament. In 1649–50 he was sent as envoy to Madrid, where six exiled royalists assassinated him and his interpreter, in 1650.—*Cooper's Biog. Dict.*

3. Journals, 1651, January 21, 23, 28. Here the Parliament closely imitated the tyranny of the Stuarts, who were in the habit of punishing obnoxious individuals by a foreign mission.

but to offer violence to his person. Edward, a son of the Queen of Bohemia, publicly called him *a rogue* and *a dog;* and the Duke of York, with the Princess Henrietta on his arm, meeting him by accident near a turnstile at Verhout, there was a struggle which should pass first,—upon which the Prince snatched the ambassador's hat off his head, and threw it in his face, saying "Learn, parricide! to respect the brother of your King." The ambassador replied,—"I regard neither you nor the person of whom you speak but as a race of fugitives." Swords were then drawn, and it was only by the interference of the spectators that fighting was prevented. Afterwards there was an attempt made to break into St. John's house, by ruffians who had a rope with them, with which they meant to strangle him. On various pretences the States General refused to grant any redress, and put off from time to time the matters that were to be negotiated.

He is refused redress and returns home, vowing revenge. A.D. 1652.

St. John returned home abruptly, vowing revenge, —and he was not a man to let his resentment pass off in empty words. He delivered to the Parliament an inflamed account of the manner in which the English nation had been wronged in his person. Next he pointed out a plan by which ample punishment might be inflicted on the offending parties. Hitherto the Dutch had been the great carriers for the English as well as other European nations;—and he proposed an ordinance to enact "that no goods, the produce of Asia, Africa, or America, should be imported into this country in ships which were not the property of English subjects; and that no goods, the produce or manufacture of any part of Europe, should be imported unless in English ships, or ships of the country where such goods were produced or manufactured." The ordinance was quickly passed, and being confirmed by an act of parliament on the Restoration, the famous

Origin of the Navigation Laws.

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Navigation Laws,[1] supposed to be the result of the calm deliberations of our ancestors, arose from a personal affront offered to one of our republican ambassadors.[2]

May. St. John a commissioner to negotiate a union with Scotland.

St. John was next employed as a commissioner to induce the Scotch to agree to a legislative union with England. He had to encounter not only the pride of national independence, but a deep distrust of those who had thrown off the Solemn League and Covenant, and the dread of a measure which "tended to draw with it a subordination of the Kirk to the State in the things of Christ." However, he convened at Dalkeith

1. The Navigation Laws regulated the privileges of British ships, and the conditions under which foreign ships were admitted to the trade of this country. Legislation of this kind was naturally of early development; we find instances of it under the later Angevin kings, and in the reigns of Henry VII. and Elizabeth laws were passed excluding foreign ships from our coasting trade. Cromwell was, however, the first to adopt the navigation system as a policy; in 1650 he excluded all foreign ships without a license from trading with the plantations of America, and in 1651 the famous Navigation Act was passed, which forbade the importation of goods into England except in English ships, or in the ships of the nation which produced the goods. This measure was levelled at the Dutch carrying trade; it forced the Dutch into war, but in the end they accepted it. The mercantile system, as it was called, was continued after the Restoration. In 1660 an act was passed providing that all colonial produce should be exported in English vessels; that no man might establish himself as a factor in the colonies, and that various sorts of colonial produce could only be exported to England and her dependencies. In 1663 it was enacted that the colonies should receive no goods whatever in foreign vessels. In 1672 came the Navigation Act of Charles II., based on that of Cromwell, under which the prohibition against introducing goods, except in English ships manned by a crew of which at least three fourths were English, applied to all the principal articles of commerce known as the "enumerated articles." This act ruined the Dutch merchant navy, and the cruel restrictions of the navigation laws were one of the main causes of the American rebellion. After the Declaration of Independence the United States were placed on the footing of a foreign nation, and hence came under the operation of the act of Charles II. They promptly retaliated by excluding our ships, and in 1814 the Treaty of Ghent was concluded, by which discriminating duties were mutually abolished. The act was repealed by the acts of 1826, 1842, 1846, and 1849.—*Low and Pulling's Dict. of Eng. Hist.*

2. Whitelock, 487, 491, 492; New Parl. Hist. iii. 364; Ludlow's Mem. 133, 250; Memoirs of the Cromwell Family, ii. 19.

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the representatives of the counties and boroughs, with full powers to treat for the entire incorporation of the two countries. A great majority were induced by him to give their consent; and afterwards there were chosen, at Edinburgh, twenty-one deputies to arrange the conditions with English commissioners at Westminster. Under his auspices conferences were afterwards held there, and this proceeding laid the foundation of the Parliament, for the whole island, which Cromwell afterwards summoned.

While in Scotland, St. John was likewise of great service in assisting the introduction into that country of English Judges, who, although jeered at as "kithless loons," administered justice so satisfactorily as almost to reconcile the natives to a foreign yoke.[1]

Qu. whether he favored the measure of making Cromwell King?

After the battle of Worcester,[2] when Cromwell, secretly wishing to be proclaimed Oliver I., said to a meeting of members of parliament and officers whom he had assembled, that "now the old King being dead, and the son being defeated, he held it necessary to come to a settlement of the nation;" and Desborough having declared for a republic, St. John is supposed to have said, "It will be found that the government of this nation, without something of monarchical power, will be very difficult to be settled so as not to shake the foundation of our laws, and the liberties of the people." Whitelock represents St. John, whom he hated, as having been a tool of Cromwell; but if St. John actually took this side, I suspect that it was to lure Cromwell on to his ruin. Most of the lawyers were sincerely for a mixed monarchical government—but St. John remained a stern democrat; and although,

1. Whitelock, 517, 532.

2. The battle of Worcester (Sept. 3, 1651) was fought between the Scottish and Parliamentarians during the unsuccessful expedition of Charles II. to England previous to the Restoration.—*Low and Pulling's Dict. of Eng. Hist.*

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to keep his places, he was ready to conform to what he disliked, he would never have actively assisted in restoring the government of ONE even with a change of dynasty.[1]

He is elected Chancellor of Cambridge.

About this time he was elected Chancellor of the University of Cambridge, having shown a disposition to protect human learning against the attacks of the fanatics, who declared that no books were worthy of being read except the books of the Old and New Testament, excluding the Apocrypha. He was likewise instrumental in preserving some of our venerable ecclesiastical structures from the ruin which then threatened them. "The Cathedral at Peterborough was left in a state of desolation by a party of the parliamentary troops under Cromwell, and so it continued until Oliver St. John, Ch. J. of C. P., on his return from Holland, obtained it of the Parliament, and gave it as a parochial church for the use of the townsmen, their proper parish church being gone much to decay."[2]

Charges against him of corruption.

The Lord Chief Justice St. John continued to represent Totness in the House of Commons, the republicans of the 17th century having no objection to the union of judicial and political functions in the same individual. But, after the dissolution of the Long Parliament, and the establishment of the Protectorate, seeing no chance for democracy, he appears to have taken very little part in public affairs. His enemies say that "though so greatly attached to his darling commonwealth, yet he chose to retain his places under every form of government. The reason of this was his avarice, which got the better of his political sentiments. They in power knew his love for wealth, and gratified him accordingly; he had the granting of all pardons to the delinquent loyalists, which amounted

1. Whitelock, 516, 487.
2. Bridges' Northamptonshire, 548.

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to the enormous sum of 40,000*l.*, nor did he scruple accepting bribes for places under Oliver." [1]

These charges not to be corroborated or contradicted.

I am unable to corroborate or to contradict these grave charges against him. He certainly was not a member of Barebone's parliament,[2] which met in 1653; nor does his name appear in the list of the House of Commons on the reformed model which met in 1654, nor in that which Cromwell called in 1656. We, therefore, do not know what part he took when the Crown was formally tendered to the Protector, but he seems at last to have relented in favor of hereditary power and honors, for in the year 1657 he accepted a peerage, and actually took his seat in Oliver's House of Lords as Lord St. John.[3] However, he was still silent and sulky, looking forward to better times.

A.D. 1658. His conduct on the accession of Richard.

He thought that these had arrived when, on the death of Oliver, the sceptre was transferred to the feeble hand of Richard.[4] His patent was renewed as Chief Justice,[5] he procured himself to be elected a member of the Council of State, and he was in hopes

1. See Noble's Memoirs of the Cromwell Family, ii. 22.

2. The Parliament to which this name has been given was summoned by Cromwell, and met for the first time July 4, 1653. A hundred and forty summonses to it were issued, and of the parties summoned only two did not attend. Hume says, "Among the fanatics of the House there was an active member much noted for his long prayers, sermons, and harangues. He was a leather-seller in London, his name Praise-God Barebone. This ridiculous name, which seems to have been chosen by some poet or allegorist to suit so ridiculous a personage, struck the fancy of the people, and they commonly affixed to the assembly the appellation of 'Barebone's Parliament.'" This assembly sat until the 12th of December, 1653, when it resigned its powers into the hands of Cromwell.—*Jennings' Anec. Hist. Brit. Parl.* (Am. Ed.), p. 7.

3. Whitelock, 666; 3 Parl. Hist. 1518.

4. Richard Cromwell (*b.* 1626, *d.* 1712), third son of the Protector, held several important offices during his father's Protectorate, and on his death in 1658 succeeded to his title; showed himself unfit for public affairs, and abdicated by the advice of his uncle Desborough (1659). After residing in France and Switzerland, he returned to England in 1680, and spent the rest of his days at Cheshunt in Hertfordshire.—*Cassell's Biog. Dict.*

5. Whitelock, 678, 688.

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to rule either as minister of the new Protector, or as the president of a pure republic, which had been so long looked for in vain. But he was again disappointed, for Richard instantly fell into universal contempt, and, military violence alarming all parties, the restoration of the exiled royal family was evidently at hand. St. John saw that this event would not only for ever dissipate his republican dreams, but would be very dangerous to him individually; and he made a resolute struggle against it. When the Rump was restored, he again took his seat as member for Totness, by virtue of his election nearly twenty years before; but his reception now was very different from what it had been in the same assembly when he was urging on the impeachment of Strafford, the overthrow of the Church, and the usurpation of military power. The vote having passed for the dissolution of the Long Parliament and the calling of a Convention, he retired to his country-house, Long-Thorpe, in Northamptonshire; and, the Cavaliers beginning to vow instant vengeance against the most obnoxious of the Roundheads, he shut himself up in a place of concealment. Although he had not actually sat as one of the late King's judges, it was truly said that no one had more effectually promoted the catastrophe of the King's death.

A.D. 1660. His danger on the restoration of Charles II.

His safety due to Thurloe.

He owed his safety to Thurloe,[1] who had been his clerk, whom he recommended to Cromwell, and who, having enjoyed great power under the Protectorate as Secretary of State, was now in favor from having materially promoted the Restoration. It was said

1. John Thurloe, born at Abbot's Roding, in Essex, 1616. He became secretary to the parliamentary commissioners at the Treaty of Uxbridge, and in 1651 attended the embassy to Holland, on his return from whence he was appointed Secretary to the Council of State, as he afterwards was to Cromwell. In 1658 he was chosen Chancellor of the University of Glasgow. At the Restoration he was some time in custody; but soon obtained his release, and died at his chambers in Lincoln's Inn, Feb. 21, 1668.—*Cooper's Biog. Dict.*

that a large bribe contributed to his deliverance; but this is a mere surmise without any authority.[1] From the proposed indemnity twenty were to be excepted, whom it was determined to bring to the scaffold. General Ludlow,[2] in his Memoirs, says, "The news of this resolution being carried to Charles II. by the Duke of York, the Duke of Buckingham, and Monk, he openly expressed his joy; and when they told him that the Chief Justice St. Johns [3] had narrowly escaped, he wished he had been added also: of which particulars I received information by a person of honor, then present, immediately after they parted." [4]

But his life was spared only on condition that he was never to accept any civil, ecclesiastical, or military office, on pain of being liable to the penalties of treason. A free pardon was offered to him if he

1. Noble's Family of Cromwell, ii. 23.

2. Edmund Ludlow was born at Maiden Bradley, Wilts, about 1620. After taking the degree of Bachelor of Arts at Trinity College, Oxford, he went to the Temple, which he left on the breaking out of the civil war, and became a captain of horse in the parliamentary service. He was present at the battle of Edgehill, and in 1644 was made prisoner at Wardour Castle, but was soon exchanged. In 1645 he succeeded his father as representative in Parliament for the county of Wilts. He also sat as one of the judges at the trial of the King, and signed the death-warrant; after which he concurred in voting down the House of Lords. When Cromwell became captain-general of the army he got rid of Ludlow by sending him to Ireland, where he was lieutenant-general of the horse. He zealously opposed the usurper, on whose death he was returned to the new Parliament, and he also sat in that which was called the Rump. In 1659 he resumed the command in Ireland, but his stay there was short; and finding that the King's judges were excepted out of the act of indemnity, he withdrew to Switzerland. After the Revolution he ventured to appear in London, which gave such offence that an address was presented to King William, by the House of Commons, praying his Majesty to issue a proclamation for apprehending him. On this Ludlow went back to Vevay, in Switzerland, where he died 1693.—*Cooper's Biog. Dict.*

3. It is curious to observe that in the seventeenth century there were many proper names which were promiscuously spelt, and must have been pronounced, without, and with, a final *s*;—as *St. John, St. Johns; Rolle, Rolles; Hale, Hales*, etc., etc.

4. Mem. 356.

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His life abroad.

would assist in bringing the regicides to justice, but he spurned such baseness. He went abroad under pretence of travelling for his health; and, still afraid of the Cavaliers, who repeatedly attempted to assassinate Ludlow and other exiled republicans, he took the name of Montague, and lived several years in great seclusion, first at Utrecht and then at Augsburg. In

His return and death.

1669 he ventured to return to his native country, and he lived quietly at Long-Thorpe till the 31st day of December, 1673, when he expired. He was supposed to have reached the 75th year of his age.

His real character may best be known by the designation generally applied to him in his own time,—"THE DARK-LANTHORN MAN." From his proud, reserved, and morose disposition, he made himself so unpopular that there was a general disposition to aggravate his misconduct, and we must receive the stories circulated against him with considerable suspicion.

He did very little for the improvement of jurisprudence; for although he effectually resisted the absurd schemes at once to abolish the Court of Chancery, and to substitute the law of Moses for the common law of England,—absorbed in his ambitious schemes he took no interest in the wise legal reforms which were carried on by Hale, Whitelock, and other enlightened Commonwealth lawyers. Beginning the world without a shilling, he died disgracefully rich, so as to countenance the charges brought against him of cupidity and corruption.

His relationship to Cromwell.

He is often mentioned as a cousin of Oliver Cromwell—but this relationship was only by marriage. His first wife was a daughter of Sir James Altham,

His children.

maternally descended from the Cromwells. By her he had several sons, and a daughter, Joanna, who was married to Sir Walter St. John, of Tregoze in Wilt-

shire, and was the grandmother of the celebrated Henry St. John, Viscount Bolingbroke.[1]

He had another daughter, Elizabeth, who being about to be united to a Huntingdonshire squire, the Chief Justice, according to the then existing law, not only gave her away, but himself performed the nuptial ceremony which made them man and wife.[2]

Parallel between St. John and Cromwell.

When Oliver St. John and Oliver Cromwell had respectively reached their fortieth year, the former was by far the more eminent person. He had not only distinguished himself at the bar, but he was the chief adviser of the great political party opposed to arbitrary government, who, although depressed for eleven years, were erelong to gain the ascendency; while the future PROTECTOR, after a licentious youth, was obscurely spending his middle age in the country, occupied with feeding cattle and draining marshes. When the troubles began, St. John preserved his superiority, and swayed the deliberations of the Long Parliament,—Cromwell, from his uncouth appearance and embarrassed oratory, being to all, except to a discerning few, a man of no mark or likelihood. Even after the praying colonel of horse had led on his psalm-singing troopers to victory at Edgehill and Marston Moor, the dark, designing lawyer, holding the Great Seal and presiding in the committee for the manage-

1. Mallet, in his Life of Bolingbroke, says, "His grandfather, Sir Walter St. John, marrying one of the daughters of L. C. J. St. John, who, as all know, was strongly attached to the republican party, Henry was brought up in his family, and consequently imbibed the first principles of his education amongst the Dissenters." He afterwards goes on to trace his contempt for all religions to the fanaticism and hypocrisy which he witnessed among the Presbyterian clergy under his great-grandfather's roof at Long-Thorpe.

2. Extract from the Parish Register of Enfield: "The truelie worthy John Bernard of Huntingdon, within the County of Huntingdon Esq^re^ single man, and M^rs^. Elizabeth S^t^. John daughter of the Right Honble Oliver S^t^. John Ch. Justice of C. P., was married before said father and by him declared man and wife Feb^y^ 26, 1655–6, coram testibus non paucis venerabilibus et fide dignis."

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ment of public affairs at Westminster, still kept military in subordination to civil authority, and hoped to make the most renowned captains who had appeared on the side of the Parliament instruments of his own aggrandizement. The "Self-denying Ordinance" was the death-struggle. If Cromwell had perished amidst the perils to which he was then exposed, St. John might have been Lord Protector instead of pining with envy for the rest of his days. He was little inferior to his rival in natural ability, and was far superior to him in intellectual acquirements. Nor would any scruples have obstructed his rise to sovereign sway, for he only loved a republic as he expected to rule it, and at the call of ambition he was always ready to change the religious faith which he professed. It did not suit his purpose to take part in the death of Charles I., but he was the murderer of the Earl of Strafford. Although it is fortunate for the liberties of England that the Parliament triumphed over Charles I., and St. John greatly contributed to this triumph, we cannot honor his memory as a true patriot, for he was crafty, selfish, cruel, and remorseless.

CHAPTER XIV.

LIFE OF LORD PRESIDENT BRADSHAW.

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Reason for noticing Lord President Bradshaw.

My collection of biographical sketches of Common-law Judges, of the first rank, would be imperfect were I to pass over him who presided at the most interesting trial which ever took place in England, although he was called Lord President instead of Lord Chief Justice,

"When Bradshaw bullied in a broad-brimm'd hat."

A.D. 1635—1640. His origin and professional progress.

He was born at Marple-hall, in Cheshire, and was the younger son of a respectable family, which had been settled there for many generations. I know nothing of his career till I find him a barrister of Gray's Inn, of considerable but obscure practice, and Judge of the Sheriff's Court in the City of London. Although well versed in his profession, he was a very dull man; and no one imagined that he could rise higher than the dignity which he had then acquired. His name was introduced into the commission of *oyer and terminer* at the Old Bailey,[1] and, to ease the Judges, he was employed to try assaults and petty larcenies; but no highwayman or burglar would have submitted, without deep murmuring, to his jurisdiction.[2] He professed himself to be, and was, a very

1. Close by Newgate is the *Old Bailey Sessions House*, for the trial of prisoners within twelve miles of St. Paul's. Over it is a dining-room, where the judges dine when business is over, whence the line—

"And wretches hang that jurymen may dine."

—*Hare's Walks in London*, vol. i. p. 168.

2. Prisoners look very much to the rank of those who may pass sentence of death upon them. A Sergeant of great experience going the Oxford Circuit in the room of Lord Chief Justice Abbot, who was suddenly taken ill, a man capitally convicted, being asked if he had any thing to say why sentence of death should not be passed upon him, exclaimed, "Yes; I have been tried before a *Journeyman Judge*."

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A.D. 1640. He is a strong republican.

violent republican. He failed in an attempt to obtain a seat in the Long Parliament; but he was loud and active in supporting the parliamentary cause in the City of London. For this reason he was appointed

A.D. 1644. junior counsel for the Commonwealth, and assisted in state prosecutions instituted against royalists.[1]

The cruel sentence passed by the Star Chamber, in the year 1638, upon John Lilburn,[2] by which he was to be pilloried, whipped, and imprisoned for life, being

A.D. 1645. brought before the House of Lords, Bradshaw was assigned him as his counsel, and succeeded not only in getting a reversal of the sentence, but a compensation of 3,000*l.* for his client, to be raised out of the sequestered estates of delinquents.[3]

He is employed as counsel for the Commonwealth. A.D. 1646.

When, under the "Self-denying Ordinance," the original set of the Commissioners of the Commonwealth Great Seal were to be removed, a vote passed the House of Commons that Bradshaw should be one of the new commissioners; but this was overruled by the Lords, of whose jurisdiction he had been in the habit of speaking disrespectfully.[4] Soon after, he was

1. Whit. 106.

2. John Lilburne was born in the county of Durham, 1618. He served his time to a clothier in London; but in 1636 Dr. Bastwick persuaded him to go to Holland, to superintend the printing of some libels against the Government. With this cargo he returned, and soon after was taken up, and sentenced to be first whipped, then to stand in the pillory, and afterwards confined in the Fleet. The Long Parliament, however, remunerated him for what he had endured by profuse grants of sequestrated estates. He fought at the battle of Edgehill as a captain of foot; but at Brentford he was made prisoner and carried to Oxford, where he would have been hanged had not the Parliament threatened retaliation. He then obtained his liberty, and was made first a major and afterwards a colonel of dragoons. Being of a quarrelsome temper, he libelled the Earl of Manchester, for which he was sent to the Tower, where he remained till 1648. He had not been long out of confinement before he renewed his old practice of abusing his superiors, for which he was banished the kingdom. After residing some time in Holland, he returned in 1657, and was tried at the Old Bailey, but acquitted. He now settled at Eltham, where he turned Quaker, and died the same year, Aug. 29, 1657.—*Cooper's Biog. Dict.*

3. 3 St. Tr. 1315–1370. 4. Whit. 224.

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appointed Chief Justice of Chester.[1] He still went on distinguishing himself for his zeal in favor of the new *régime*, and his loud expression of impatience for the entire abolition of monarchy.

Oct. 11, 1648. He becomes a Sergeant.

At the great move in legal offices shortly before the King's trial, the House of Commons, which was now exercising the functions of all the officers of the Crown, ordered that there should be a new call of Sergeants, and "that Mr. Bradshaw, of Gray's Inn, be of the number." On the day of the solemnity, Lord Commissioner Whitelock, who was a much more moderate politician, advised him to be like his predecessor, celebrated by Chaucer,—

"A Sergeant-at-law, wary and wise."[2]

Trial of Charles I.

When the ordinance to constitute the HIGH COURT OF JUSTICE was first introduced into the House of Commons, Sergeant Bradshaw was named in it as an *assistant* only, but in a further stage of its progress he was promoted to the rank of *Commissioner*. It had been hoped that *éclat* would have been given to the approaching trial by Whitelock, Lord Keeper of the Great Seal,—Rolle, Lord Chief Justice of the King's Bench,—St. John, Lord Chief Justice of the Common Pleas,—or Wilde, Lord Chief Baron of the Exchequer, acting as Lord President of this tribunal, which was framed after the fashion of that invented by Queen Elizabeth for the condemnation of Mary Queen of Scots; but they all positively refused to take any part in a proceeding so contrary to the established forms of criminal procedure; although, if a bill of indictment had been found against Charles Stuart by a grand jury, and he had been arraigned and made to hold up his hand before a petty jury, in the usual form, some of them, probably, would not have hesitated, in the King's name, to try him and to pass sentence upon

1. Whit. 238. 2. Whit. 342, 353.

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him. Bradshaw, either from wishing that he might escape the service altogether, or that in his absence his merits might be more freely discussed, did not attend the first meetings of the Commissioners held for arranging the preliminaries of the trial.

Bradshaw chosen President of the High Court of Justice.

On the 10th of January, 1649, "John Bradshaw, Sergeant-at-law, a Commissioner of this court, was chosen President; who being absent, Mr. Say, one of the Commissioners then present, was appointed President *pro tempore* until the said Sergeant Bradshaw should attend the said service."[1] "On the 12th of January, Sergeant Bradshaw, upon special summons, attended this court, and being, according to former order, called to take his place of President of the said court, made an earnest apology for himself to be excused; but therein not prevailing, in obedience to the desires and commands of this court he submitted to their order, and took his place accordingly. Thereupon the court ordered that he should have the title of LORD PRESIDENT, as well without as within the said court—against which title he pressed much to be heard to offer his exceptions, but was overruled."[2] Such is the official minute of the appointment of President. Lord Clarendon says,—

Clarendon's account of his appointment.

"To that office *one* BRADSHAW was chosen; a lawyer of Gray's Inn, not much known in Westminster Hall, though of good practice in his chamber, and much employed by the fractious. He was a gentleman of an ancient family in Cheshire, but of a fortune of his own making. He was not without parts, and of great insolence and ambition. When he was first nominated, he seemed much surprised, and very resolute to refuse it; which he did in such a manner, and so much enlarging upon his own want of abilities to undergo so important a charge, that it was very evident he expected to be put to that apology. And when he was pressed with more importunity than could have been used by chance—with

1. Minutes of the Court. 2. Minutes of the Court.

Clarendon's account, continued.

great humility he accepted the office, which he administered with all the pride, impudence, and superciliousness imaginable. He was presently invested in great state, and many officers and a guard assigned for the security of his person, and the Dean's house in Westminster given to him for ever for his residence and habitation; and a good sum of money, about 5,000*l.*, was appointed to be presently paid to him, to put himself in such an equipage and way of living as the dignity of the office which he held would require. And now the Lord President of the High Court of Justice seemed to be the greatest magistrate in England."[1]

It is said that "Mr. Sergeant Bradshaw, the President, was afraid of some tumult upon such new and unprecedented insolence as that of sitting judge upon his King; and therefore, besides other defence, he had a thick big-crowned beaver hat, lined with plated steel, to ward off blows."[2]

Jan. 1649. Bradshaw's conduct during the trial.

We have a very full report of the whole trial; and, after attentively perusing it, I must say that the charge brought against Bradshaw of wanton brutality on this occasion is considerably exaggerated. The *act* of sitting in trial upon the King is to be regarded as a great atrocity; but this must not be confounded with the *manner* in which the proceeding was conducted.

1. Rebellion, iii. 373.

2. Kennett, iii. 181, n. "This hat, with a Latin inscription upon it, is now to be seen in the Museum at Oxford."—*Ibid.* In the middle of the seventeenth century the common-law judges adhered to their *coifs*, or black cloth caps, which they still put on when they pass sentence of death; but the Lord Chancellor, and the Speaker of the House of Commons, wore a round high-crowned beaver hat. The full-bottom wig, and the three-cornered cocked hat, were introduced from France after the Restoration. Barristers' wigs came in at the same time, but very gradually, for the judges at first thought them so coxcombical that they would not suffer young aspirants to plead before them so attired. Who would have supposed that this grotesque ornament, fit only for an African chief, would be considered indispensably necessary for the administration of justice in the middle of the nineteenth century! When I argued the great Privilege Case, having to speak sixteen hours, I obtained leave to speak without a wig; but under the condition that "*this was not to be drawn into a precedent.*"

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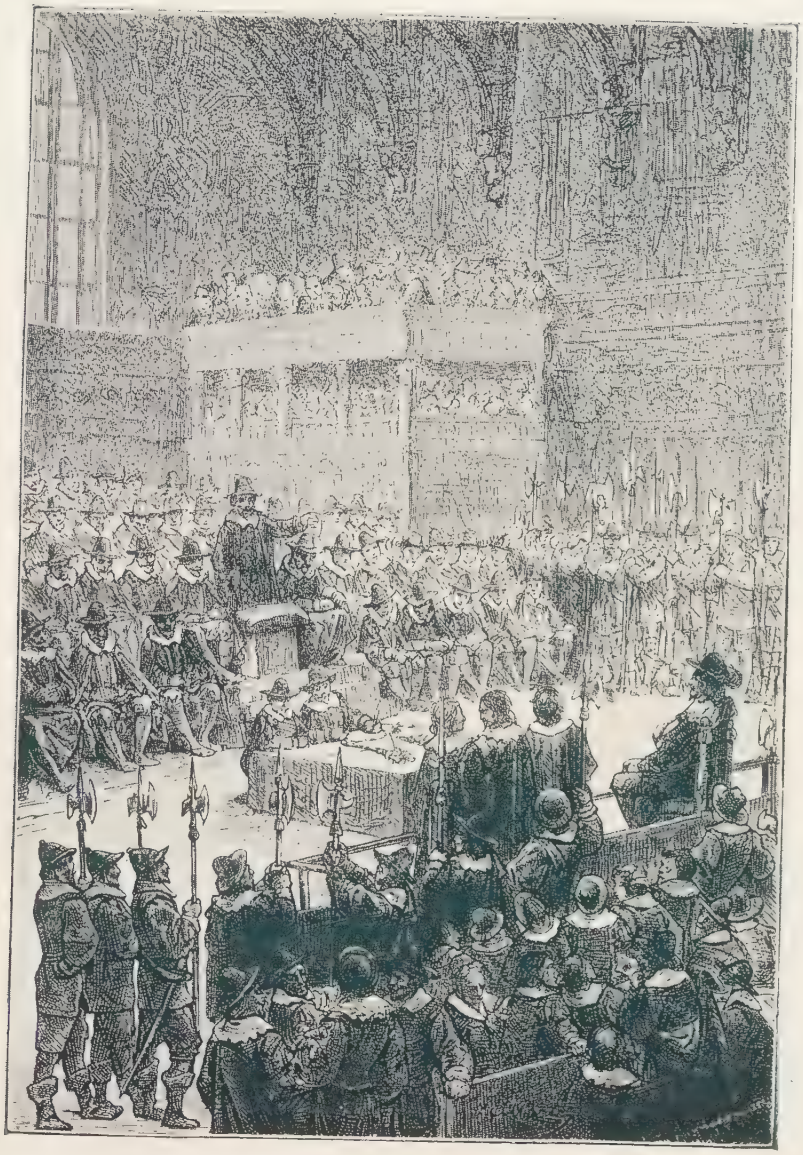
Account of Bradshaw's conduct, continued.

Assuming a court to be constituted, its authority must be maintained, and the steps must be taken which are necessary for bringing to a conclusion a trial commenced before it. The King's demeanor was most noble; and he displayed such real dignity, such presence of mind, such acuteness, such readiness, such liberality of sentiment, and such touches of eloquence —that he makes us forget all his errors, his systematic love of despotic power, and his incorrigible bad faith. Instead of hurrying him to the scaffold, we eagerly desire to see him once more on the throne, in the hope that misfortune might at last induce him sincerely to submit to the restraints of a constitutional monarchy. But these are feelings which could not properly actuate the mind of a judge the very foundation of whose authority was questioned by the accused. Therefore it could be no aggravation of Bradshaw's crime, in accepting the office of President,[1] that he said, "Sir,

1. "Bradshaw, in a scarlet robe, and covered by his 'broad-brimmed hat,' placed himself in a crimson-velvet chair in the centre of the court, with a desk and velvet cushion before him; Say and Lisle on each side of him; and the two clerks of the court sitting below him at a table, covered with rich Turkey carpet, on which were laid the sword of state and the mace. The rest of the court, with their hats on, took their seats on side benches, hung with scarlet. . . . During the reading of the charge the King sat entirely unmoved in his chair, looking sometimes to the Court and sometimes to the galleries. Occasionally he rose up and turned about to behold the guards and spectators, and then sat down again, but with a majestical composed countenance, unruffled by the slightest emotion, till the clerk came to the words *Charles Stuart, as a tyrant, traitor, murderer, etc.;* at which the King laughed, as he sat, in the face of the Court. The silver head of his staff happened to fall off, at which he appeared surprised; Herbert, who stood near him, offered to pick it up, but Charles, seeing he could not reach it, stooped for it himself. When the words were read stating the charge to be exhibited 'on behalf of the people of England,' a voice in a loud tone called out, 'No, nor the half of the people—it is false—where are they or their consents?—Oliver Cromwell is a traitor.' This occasioned a confusion in the court; Colonel Axtell even commanded the soldiers to fire into the box from which the voice proceeded. But it was soon discovered that these words, as well as a former exclamation on calling Fairfax's name, were uttered by Lady Fairfax, the General's wife, who was immediately compelled by the guard to withdraw."—*Trial of Charles I., Family Library*, xxxi.



TRIAL OF CHARLES I.

From an Old Print.

you have heard the charge read, and we expect that you will answer it;" or that, upon an explanation being required, he observed that "the authority of the Court could not be disputed." He certainly did, more than once, use language unnecessarily disrespectful, as when he talked of Charles being an "elected King," and exclaimed with a sneer, "Sir, how well you have managed your trust is known; your way of answer is to interrogate the Court, which beseems not you in this condition. How great a friend you have been to the laws and liberties of the people, let all England and the world judge. How far you have preserved the privileges of the people, your actions have spoke it; but truly, Sir, men's intentions ought to be known by their actions: you have written your meaning in bloody characters throughout the whole kingdom." However, on each of the three days when Charles was brought to the bar of the Court, he was courteously requested to plead, and he was never interrupted unless when he denied the authority of the judges to sit there. It is likewise remarkable that Bradshaw abstained from pronouncing with his own mouth the sentence "that the said Charles Stuart, as a tyrant, traitor, murderer, and public enemy to the good people of this nation, shall be put to death by the severing of his head from his body"—but ordered it to be read by the clerk, and then merely added, "the sentence now read and published is the act, sentence, judgment, and resolution of the whole Court;" whereupon Cromwell, Ireton, Lord Grey de Groby, Ludlow, and the other regicides, stood up, as had been previously arranged, in token of their assent.

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Bradshaw afterwards, on the 29th of January, presided at a meeting of the Court, when it was resolved "that the *open street before Whitehall* is a fit place for executing the judgment against the King, and that the

Jan. 29.

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King be there executed on the morrow."[1] Bradshaw, as President, was the first of the fifty-nine who signed the fatal warrant, of which a *fac-simile* may be seen on every book-stall.[2]

February. Trial of the Duke of Hamilton before him.

His conduct was, I think, still more culpable on several trials that followed before the High Court of Justice. The Duke of Hamilton[3] had fought at Worcester under the command of the King of Scots and by the authority of the Scottish parliament. Being taken in battle, he was to be considered, and he had been long treated, as a prisoner of war. Now he was arraigned before this tribunal, constituted by an ordinance of the English House of Commons,—on a charge of high treason against the people of England. He pleaded that although he had the English title of Earl of Cambridge, by which he was prosecuted, he was born and continued domiciled in Scotland, obliged to obey the King and parliament of that independent state, and that even in England there was no law by which as an English peer he could be so tried upon

1. It is very extraordinary that a controversy should have arisen as to whether the execution was in front or behind the Banqueting-house, in spite of this order, and contemporaneous prints, which exhibit the scaffold between the windows looking to the west, and show the populace looking up at it from Charing Cross.

2. 4 St. Tr. 990–1155; Rebellion, iii. 384; Whitelock, 366.

3. James, Duke of Hamilton, was the eldest son of James, Marquis of Hamilton, by Lady Anne Cunningham, daughter of James, Earl of Glencairn, and born in Scotland June 19, 1606. He studied at Exeter College, Oxford, and at the age of eighteen succeeded to his father's title. He now rose in high favor at Court, but gained little credit by an expedition into Germany to assist Gustavus Adolphus of Sweden, 1630. When the troubles broke out in Scotland, the Marquis had the command of the fleet, and in 1643 was created a Duke; but soon afterwards his loyalty became suspected, and he was sent prisoner to Pendennis Castle, and next to that of St. Michael's Mount, Cornwall. There he remained till 1646, when he regained his liberty and went to Scotland, where he was accused of having betrayed the King and received a share of the money. To wipe off this disgrace, he raised some forces and entered England, but was defeated at Preston, in Lancashire, Aug. 17, 1648, and sent to Windsor Castle. After a summary trial, he was sentenced to be beheaded, which was put in execution March 9, 1648–9.—*Cooper's Biog. Dict.*

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such a charge. But the Lord President Bradshaw laid down, that, though born in Scotland, the moment he crossed the border he was subject to the English law, and that by fighting against an army commissioned by the English parliament he was guilty of the crime of high treason. So sentence of death was passed upon him.

Trial of other royalists.

Next came four Englishmen, the Earl of Holland, the Earl of Norwich, Lord Capel,[1] and Sir John Owen, taken prisoners by General Fairfax, who had declared to them that their lives should not be in danger. They urged, that in fighting for the King they could not be guilty of high treason; and that, at any rate, the engagement of the parliamentary general was binding. Lord Capel, in particular, claimed as an English peer to be tried by his peers, according to his birthright:

Bradshaw's disregard of law and justice.

Lord President Bradshaw: "My Lord Capel, let me tell you you are tried before such Judges as the Parliament think right to assign you, and these Judges have already condemned a better man than yourself. As to the defence on the merits, the Parliament had become the supreme power in the state, and to levy war against the Parliament was treason. The supposed promise of General Fairfax was never ratified by the Parliament; and, at most, it could only exempt the prisoners from being tried before a council of war, without precluding any proceeding which might be necessary for the peace and safety of the kingdom."

They were all convicted. On a petition to the House of Commons for mercy, Owen was pardoned by a large majority, and the Earl of Norwich escaped by the casting voice of the Speaker. But, after a long

1. Arthur, Lord Capel, an English cavalier of Hertfordshire, who was elected a member of Parliament in 1640. After acting with the popular party, he turned royalist, and was created Baron Capel in 1641. In the civil war he held a high command in the royalist army, and was appointed a counsellor of the Prince of Wales. After having made peace, or "compounded," with Parliament, he joined another revolt in 1648, was taken by Fairfax, tried for treason, and executed in 1649.—*Thomas' Biog. Dict.*

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debate on the Earl of Holland's case, there was a majority of one against him; and the friends of the Duke of Hamilton, and of Lord Capel, found so little support that they did not venture to divide the House. Accordingly, these three noblemen were executed as traitors, this being the first specimen of criminal procedure since the establishment of the new Republic. No state trial under the Stuarts shows such an utter contempt of the conventional forms of law and the eternal principles of justice.[1]

He is made Chancellor of the Duchy of Lancaster, etc. A.D. 1650.

As a recompense for the eminent services of Lord President Bradshaw, an ordinance passed for settling upon him 2,000*l.* a year out of the forfeited estates of malignants,[2] he was appointed Chancellor[3] of the

1. 4 St. Tr. 1155–1236; Rebellion, iii. 402; Whitelock, 386; Ludlow, 247; Burnet's Hamiltons, 385.

2. Whitelock, 420. A phrase used by the Parliament to describe the King's evil advisers. It occurs frequently in the Grand Remonstrance. "All the fault is laid upon ill ministers, who are there called a malignant party" (May). The Commons began by saying that for the last twelve months they have labored to reform the evils which afflict the kingdom, and "do yet find an abounding malignity and opposition in those parties and factions who have been the cause of those evils." They go on to say that "the root of all this mischief" is "a malignant and pernicious design of subverting the fundamental laws and principles of government, upon which the religion and justice of this kingdom are firmly established." Strafford and Laud were the heads of this "malignant party," who were "the actors and promoters of all our misery." This party, they conclude, still exists, hinders the work of reformation, and sows discord between King and Parliament, and between Parliament and people. The name came to be applied afterwards to all who supported the King against the Parliament. The Lord Mayor of London, Sir Richard Gourney, says Clarendon, "grew to be reckoned in the first form of the malignants, which was the term they imposed upon all those they meant to render odious to the people."—*Low and Pulling's Dict. of Eng. Hist.*

3. Among the records of the office which I have now the honor to hold, I find the ordinance for the appointment of my distinguished predecessor:

"An Act for the making of John Bradshawe, now Sergeant-at-law, and Lord President of the Council of State, Chancellor of the Duchy and County Palatine of Lancaster.

"Be it enacted by the present Parliament, and by the authority of the same, that John Bradshaw, Sergeant-at-law, Lord President of the Council of State by authority of Parliament, shall be and is

Duchy of Lancaster, and he was raised to be a CHAP. XIV.

hereby nominated, constituted, and appointed Chancellor of the Duchy of Lancaster, and Chancellor of the County Palatine of Lancaster, and Keeper of the respective Seals (appointed by the authority aforesaid) for the said Duchy and County Palatine; to hold, execute, and enjoy the said offices and places, and all powers, jurisdictions, and authorities lawfully belonging to the same; and also to enjoy and receive all such fees, privileges, advantages, and profits as are thereunto of right belonging, in as large and ample manner as any former Chancellor of the Duchy and County Palatine of Lancaster, and Keeper of the Seals of the said Duchy and County Palatine, lawfully have held, exercised, and enjoyed the same, until the 10th day of August which shall be in the year of our Lord God 1650. And it is further enacted by the authority aforesaid, that the clerk of the court of the said Duchy do forthwith prepare a patent in the name of *Custodes Libertatis Angliæ Authoritate Parliamenti*, in the usual form *mutatis mutandis*, to pass the seals of the said Duchy and County Palatine of Lancaster for granting of the said offices unto the said Lord President of the Council of State, according to this act. And it is further enacted, by the authority aforesaid, that the Commissioners of the Great Seal of England, or any one of them, shall receive into his or their hands the seals appointed by this present Parliament for the said Duchy and County Palatine, which commissioners or any two of them are thereupon to affix the said several seals to the said patent, and to administer to the said Lord President an oath for the due execution of the said places and offices in manner and form following; viz.:

"'You shall swear that, to your cunning and knowledge, you shall do equal right and justice, and be indifferent in all matters to all manner of men that shall pursue and answer before you and the Council of the Duchy of Lancaster for the Commonwealth of England, and that which shall be most for the avail and profit of the Commonwealth and good rule and governance of the said Duchy, as far as right and conscience will require.'

"And after the said oath administered, the said Commissioners of the Great Seal, or any two of them, are to deliver the said patent and both the said seals of the said Duchy and County Palatine to the said Lord President, to be by him kept as Chancellor of the said Duchy and County Palatine."

There were several other ordinances, acts, and patents, continuing "Lord Bradshaw" in the office till Oliver's death.

The original of the following warrant under the sign manual of Richard is extant:

"Our will and pleasure is, that you forthwith prepare fit for our signature a bill containing our grant and constitution of our trusty and well-beloved John Bradshawe, Sergeant-at-law, of our especial grace, and in consideration of his faithful and acceptable services to the publique, to be Chancellor of the County Palatine of Lancaster of us and our successors, and also Keeper of the Seal of us and our successors for the said office, provided or to be provided. And also to be Chancellor of the Duchy of Lancaster of us and our successors, and Keeper

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member of the Council of State.[1]

We must, in fairness, allow that he now acted his part with consistency and courage. A friend to pure democracy, he strenuously opposed the efforts of Cromwell to engross all the powers of the state into his own hands, and even on the violent dissolution of the Long Parliament he remained unappalled. Although he had not a seat in that assembly, he availed himself of an opportunity to assert his independence as a member of the Council of State. In the afternoon of the day which saw the "bawble" forcibly removed from the table of the House of Commons, he called a meeting of his colleagues at Whitehall, and he had just taken the chair when the Lord General, entering, said,—

He opposes Cromwell.

April 20, 1653.

"'Gentlemen, if ye are here as private individuals, ye are welcome; but if as a Council of State, ye must know that the Parliament is dissolved, and with it also the Council.' 'Sir,' replied Bradshaw, with great spirit, 'we have heard what you did at the House this morning, and before many hours all England will know it. But, sir, you are mistaken to think that the Parliament is dissolved. No person under heaven can

of the Seal of us and our successors for the said office, provided or to be provided; with our grant unto him the said John Bradshaw of the aforesaid offices respectively, etc., so long as he shall therein well demean himself, etc. Given at Whitehall the 5th day of December, 1658."

The bill was prepared for signature, and was presented to and signed by his Highness Richard Lord Protector; and a patent was accordingly sealed, bearing date the 16th of December, 1658. The draft is indorsed "Lord Bradshawe's Patent of Chancellor of the County and Duchy of Lancaster," and he is therein described as "our trusty and well-beloved John Bradshawe, Sergeant-at-law, Chief Justice of Chester, Montgomery, Denbigh, and Flint."

The proceedings of the Duchy Court, during the Chancellorship of "Lord Bradshaw," exhibit great regularity. The business of the Court was considerable, and many very important decrees were pronounced by him, as well in original suits as upon appeal from the Vice-Chancellor.

Some attempts were made during the Commonwealth to abolish the Duchy and County Palatine of Lancaster; but they continued, with all their immunities and privileges, till the Restoration.

1. Whitelock, 529.

dissolve them but themselves. Therefore take you notice of that.' After this protest he withdrew."[1]

Resistance by physical force to Oliver, become Lord Protector, President Bradshaw found to be impossible; but he refused to acknowledge the usurper's authority, and he eagerly thwarted his measures. He was not admitted to Barebone's parliament, which was nominated by the executive government; but, a new parliament being called in 1654, on the excellent reformed model imitated by Lord Grey, he was returned one of the four members for his native county, and was at the top of the poll.[2] At the commencement of the session—

He thwarts Cromwell's measures in a new parliament.

"Lord President Bradshaw was very instrumental in opening the eyes of many young members who had never before heard their interest so clearly stated and asserted; so that the Commonwealth party increased daily, and that of the sword lost ground. Cromwell, being informed of these transactions by his creatures, and fearing lest he should be deposed by a vote of this assembly from the throne which he had usurped, caused a guard to be set on the House early in the morning, and required the members to attend him in the Painted Chamber. There he acquainted them that none should be permitted to sit who did not subscribe to the Government by a single person. So soon as this visible hand of violence appeared to be upon them, most of the eminent asserters of the liberty of their country withdrew themselves, being persuaded they should best discharge their duty to the nation by this way of expressing their abhorrence of his tyrannical proceedings."

He refuses to take out a new commission at Cromwell's demand.

Cromwell, afraid of Bradshaw's secret plots, wished to come to an open rupture with him, and, summoning him to Whitehall, required him to take out a new commission for his office of Chief Justice of Chester. *Bradshaw:* "Sir, I require no new commission, and I

1. Whitelock, 554; Leicester's Journal, 139; Hutchinson, 332; Burton's Diary, iii. 98.

2. 3 Parl. Hist. 1428.

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will take none. I hold the office by a grant from the parliament of England, in the terms *quam diu se bene gesserit*.[1] And whether I have carried myself with that integrity which my commission exacts from me, I am ready to submit to a trial by twelve Englishmen to be chosen by yourself." He resolved to go his circuit as usual, unless he should be prevented by force; and a collision was expected. "But it was thought more advisable," says Ludlow, "to permit him to execute his office, than, by putting a stop to his circuit, to make a breach with those of the long robe whose assistance was so necessary to the carrying on of Cromwell's design."[2]

Bradshaw remained in a state of sulky opposition during the remainder of Oliver's Protectorate, refusing a peerage and other lures that were held out to win him over. On the accession of Richard he had again hopes of seeing a democratical republic established. In consequence, he accepted a seat in the Council of State, and he allowed himself to be returned as a member for Cheshire to the new parliament.[3] He rejoiced to find that the Cromwell dynasty was set aside, and for a short time there was a hope for the good cause.

A.D. 1659. His effort to restore the Republic.

June. The Commonwealth having been again proclaimed, he agreed to be a commissioner of the Great Seal, with Terryll and Fountain, two violent republicans; and he triumphantly swore to be "true to this Commonwealth, without a single person, kingship, or House of Lords." But in a few weeks he had the mortification to see the supreme power again in the hands of the military, and his health suffered severely from the anguish of his spirit.

His anguish at seeing this frustrated.

September. At a meeting of the Council, Colonel Sydenham, having tried to justify the violent dispersion of the

1. "As long as he shall have conducted himself well."
2. Mem. 216, 220.
3. 3 Parl. Hist. 1531.

Parliament on the plea that it had been rendered necessary by a particular call of Divine Providence, "the Lord President Bradshaw, who was then present, though by long sickness very weak and much extenuated, yet animated by his ardent zeal and constant affection to the common cause, upon hearing those words, stood up and interrupted him, declaring his abhorrence of that detestable action, and telling the Council that 'being now going to his God he had not patience to sit there to hear this great name so openly blasphemed;' he thereupon departed to his lodgings, and withdrew himself from public employment." [1] CHAP. XIV.

He languished till the 31st of October, when he expired—pleased with the thought of being removed to another scene of existence before the irresistible reaction which he deplored had produced the restoration of the Stuart line. In Whitelock's Memorials the entry of his death concludes with these words: "a stout man, and learned in his profession—no friend to monarchy." Oct. 31. His death.

The most wonderful testimony in his favor is from Milton, who is said to have been recommended by him to Cromwell for the place of Latin secretary, and in his "Defensio pro Populo Anglicano" thus extols him:

"John Bradshaw—a name which Liberty herself, in every country where her power is acknowledged, has consecrated to immortal renown—was descended, as is well known, from a distinguished family. The early part of his life he devoted to the study of the laws of his country. Having become a profound lawyer, an eloquent advocate, and a zealous asserter of the rights of the people, he was employed in important state affairs, and frequently discharged with unimpeachable integrity the duties of a Judge. When at length selected by the Parliament to preside at the trial of the King, he did not decline this most dangerous task: to the science of the law, he Panegyric upon him by Milton.

1. Ludlow, 277.

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had brought a liberal disposition, a lofty spirit, sincere and unoffending manners; thus qualified, he supported that great and unprecedentedly fearful office, exposed to the threats and to the daggers of innumerable assassins, with so much firmness, such gravity of demeanor, such presence and dignity of mind, that he seemed to have been formed and appointed immediately by the Deity himself, for the performance of that deed which the Divine Providence had long before decreed to be accomplished in this nation; and so far has he exceeded the glory of all former tyrannicides, as it is more humane, more just, more noble, to pass a lawful sentence upon a tyrant, than to put him to death like a wild beast. Ever eager to discover merit, he is equally munificent in rewarding it. Delighted to dwell on the praises of others, he studiously suppresses his own."[1]

After his death he is attainted and executed as a traitor. Jan. 30, 1661.

His death before the Restoration saved him from the fate which befell other regicides. But, contrary to the sentiment that "English vengeance wars not with the dead," an act of parliament was passed to attaint him; and both Houses made an order "that the carcasses of Oliver Cromwell, John Bradshaw, and Henry Ireton, (whether buried in Westminster Abbey, or elsewhere,) be with all expedition taken up, and

1. "Est Joannes Bradscianus (quod nomen libertas ipsa, quâcúnque gentium colitur, memoriæ sempiternæ celebrandum commendavit) nobili familiâ, ut satìs notum est, ortus; unde patriis legibus addiscendis primam omnem ætatem sedulò impendit: dein consultissimus causarum et disertissimus patronus, libertatis et populi vindex acerrimus, et magnis reipublicæ negotiis est adhibitus, et incorrupti judicis munere aliquotiès perfunctus. Tandèm utì Regis judicio presidere vellet a senatu rogatus, provinciam sanè periculosissimam non recusavit. Attulerat enim ad legum scientiam ingenium liberale, animum excelsum, mores integros ac nemini obnoxios; unde illud munus, omni propè exemplo majus ac formidabilius, tot sicariorum pugionibus ac minis petitus, ità constantèr, ità gravitèr, tantà animi cum præsentiâ ac dignitate gessit átque implevit, ut ad hoc ipsum opus, quod jàm olim Deus edendum ìn hoc populo mirabili providentiâ decreverat, ab ipso numine designatus atque factus videretur; et tyrannicidarum omnium gloriam tantùm superaverit, quantò est humanius, quantò justius ac majestate plenius tyrannum judicare, quàm injudicatum occidere. Benè merentes quoscúnque nemo citiùs aut libentiùs agnoscit, neque majore benevolentiâ prosequitur; alienas laudes perpetuò prædicare, suas tacere solitus."

drawn upon a hurdle to Tyburn, and there hanged up in their coffins upon the gallows there some time, and after that buried under the said gallows." A contemporary historian gives the following account of the ceremony :

Wharton's account of this.

"Thursday, January 30, 1660–1, the odious carcasses of Oliver Cromwell, John Bradshaw, and Henry Ireton, were taken out of their graves, drawn upon sledges to Tyburn, and, being pulled out of their coffins, there hanged at the several angles of the triple tree till sunset ; then taken down, beheaded, and their loathsome trunks thrown into a deep hole under the gallows.[1] Their heads were afterwards set upon poles on the top of Westminster Hall."[2]

1. 1661, January 30. "This day (O the stupendous and inscrutable judgements of God !) were the carcasses of those arch rebells Cromwell, Bradshaw the judge who condemn'd his Majestie, and Ireton, son-in-law to ye Usurper, dragg'd out of their superb tombs in Westminster among the kings, to Tyburne, and hang'd on the gallows from 9 in ye morning till 6 at night, and then buried under that fatal and ignominious monument in a deepe pitt ; thousands of people who had seene them in all their pride being spectators. Looke back at November 22, 1658 (Oliver's funeral), and be astonish'd ! and feare God and honor ye Kinge ; but meddle not with them who are given to change."—*Evelyn's Diary.*

2. Gesta Britannorum, by Sir George Wharton. London, 1667. "Ireton's head was in the middle, and Cromwell's and Bradshaw's on either side. Cromwell's head, being embalmed, remained exposed to the atmosphere for twenty-five years, and then one stormy night it was blown down, and picked up by the sentry, who, hiding it under his cloak, took it home and secreted it in the chimney-corner, and, as inquiries were constantly being made about it by the Government, it was only on his death-bed that he revealed where he had hidden it. His family sold the head to one of the Cambridgeshire Russells, and, in the same box in which it still is, it descended to a certain Samuel Russell, who, being a needy and careless man, exhibited it in a place near Clare Market. There it was seen by James Cox, who then owned a famous museum. He tried in vain to buy the head from Russell ; for, poor as he was, nothing would at first tempt him to part with the relic, but after a time Cox assisted him with money, and eventually, to clear himself from debt, he made the head over to Cox. When Cox at last parted with his museum, he sold the head of Cromwell for 230*l.* to three men, who bought it about the time of the French Revolution to exhibit in Mead Court, Bond Street, at half a crown a head. Curiously enough, it happened that each of these three gentlemen died a sudden death, and the head came into the possession of the three nieces of

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Brad-shaw's re-mains said to have been carried to America before this time.

As a pendant to the well-known story that Charles I.'s head had been substituted for Cromwell's, and underwent this indignity, a narrative was given to the world that the remains of President Bradshaw, being carried to America before the Restoration, were deposited in that Land of Liberty; and the following inscription is to be read on a cannon at Annapolis:

His epitaph.

"Stranger!
Ere thou pass, contemplate this cannon;
nor regardless be told,
that near its base lies deposited the dust of
JOHN BRADSHAW,
who, nobly superior to selfish regards,
despising alike the pageantry of courtly splendor,
the blast of calumny,
and the terror of regal vengeance,
presided in the illustrious band of heroes and patriots
who fairly and openly adjudged
CHARLES STUART,
tyrant of England,
to a public and exemplary death;
thereby presenting to the amazed world,
and transmitting down through applauding ages,
the most glorious example
of unshaken virtue, love of freedom,
and impartial justice,
ever exhibited on the blood-stained theatre
of human action.
Oh! Reader!
pass not on till thou hast blessed his memory;
and never—never forget
THAT REBELLION TO TYRANTS
IS OBEDIENCE TO GOD."

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the last man who died. These young ladies, nervous at keeping it in the house, asked Mr. Wilkinson, their medical man, to take care of it for them, and they subsequently sold it to him. For the next fifteen or twenty years Mr. Wilkinson was in the habit of showing it to all the distinguished men of that day, and the head, much treasured, remains in the family. The circumstantial evidence is very curious. It is the only head in history which is known to have been embalmed and afterwards beheaded. On the back of the neck, above the vertebræ, is the mark of the cut of an axe where the executioner, having, perhaps, no proper block, had struck too high, and, laying the head in its soft embalmed state on the block, flattened the nose on one side, making it adhere to the face. The hair grows promiscuously about the face, and the

beard, stained to exactly the same color by the embalming liquor, is tucked up under the chin with the oaken staff of the spear with which the head was stuck upon Westminster Hall, which staff is perforated by a worm that never attacks oak until it has been for many years exposed to the weather. The iron spear-head, where it protrudes above the skull, is rusted away by the action of the atmosphere. The jagged way in which the top of the skull is removed throws us back to a time when surgery was in its infancy, while the embalming is so beautifully done that the cellular process of the gums and the membrane of the tongue are still to be seen."—*Letter signed "Senex," London Times, Dec.* 31, 1874.

CHAPTER XV.

CHIEF JUSTICES OF THE KING'S BENCH FROM THE RESTORATION TILL THE APPOINTMENT OF SIR MATTHEW HALE.

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A.D. 1660. Difficulty of filling the Bench at the Restoration.

At the restoration of Charles II. it was considered necessary to sweep away the whole of the Judges from Westminster Hall, although, generally speaking, they were very learned and respectable, and they had administered justice very impartially and satisfactorily.[1] Immense difficulty was found in replacing them. Clarendon was sincerely desirous to select the fittest men that could be found, but from his long exile, he was himself entirely unacquainted with the state of the legal profession, and, upon making inquiries, hardly any could be pointed out whose political principles, juridical acquirements, past conduct, and present position entitled them to high preferment. The most eminent barristers on the royalist side had retired from practice when the civil war began, and the new generation which had sprung up had taken an oath to be faithful to the Commonwealth. One individual was discovered, Sir Orlando Bridgman—eminent both for law and for loyalty. Early distinguished as a rising advocate, he had sacrificed his profits that he might assist the royal cause by carrying arms, and, refusing to profess allegiance to those whom he considered *rebels*, he had spent years in seclusion,—still devoting himself to professional studies, in which he

Sir Orlando Bridgman.

1. Their decisions are still of as much authority on legal questions as those of courts sitting under a commission from the Crown; and they were published with the sanction of the Chancellor and all the Judges in the reigns of Charles II. and James II.

took the highest delight. At first, however, it was thought that he could not properly be placed in a higher judicial office than that of Chief Baron of the Exchequer,—and the Chiefships of the King's Bench and Common Pleas were allowed to remain vacant some months, *puisnies* being appointed in each court to carry on the routine business. CHAP. XV.

At last a Chief Justice of England was announced, —SIR ROBERT FOSTER; and his obscurity testified the perplexity into which the Government had been thrown in making a decent choice. He was one of the very few survivors of the old school of lawyers which had flourished before the troubles began; he had been called to the degree of Sergeant-at-law so long ago as the 30th of May, 1636, at a time when Charles I., with Strafford for his minister, was ruling with absolute sway, was imposing taxes by his own authority, was changing the law by proclamation, and hoped never again to be molested by parliaments. This system was condemned and opposed by the most eminent men at the English bar, but was applauded and supported by some who conscientiously thought that all popular institutions were mischievous; and by more who thought that court favor gave them the best chance of rising in the world. Foster is supposed to have defended Ship-money,—the cruel sentences of the Star Chamber,—the billeting of soldiers to live at free quarters, and other flagrant abuses,—as well from a sincere love of despotism as from a desire to recommend himself to those in power. Sir Robert Foster, Chief Justice. His professional career.

At the time when tyranny had reached its culminating point, he was appointed a Puisne Judge of the Court of Common Pleas. Luckily for him, Hampden's case had been decided before his appointment, and he was not impeached by the Long Parliament. When the civil war broke out, he followed the King; He is made a Puisne Judge by Charles I Jan. 27, 1640.

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and afterwards assisted in attempting to hold a Court of Common Pleas at Oxford, but sat alone, and his tribunal was without advocates or suitors. An ordinance passed the House of Commons for removing him from his office, and, on account of his excessive zeal in the royal cause, he was obliged to compound for his estate by paying a very large fine.

His conduct during the Commonwealth.

After the King's death, he continued in retirement till the Restoration. He is said to have had a small chamber in the Temple, and, like Sir Orlando Bridgman and Sir Jeffrey Pelman, to have practised as a chamber counsel, chiefly addicting himself to conveyancing.

A.D. 1660. He is reinstated by Charles II.

The first act of the Government of Charles II. was to reinstate Foster in his old office. There was a strong desire to reward his constancy with fresh honors; but he was thought unfit to be raised higher, and the office of Chief Justice of the King's Bench could not be satisfactorily filled up.

Only six Common-law Judges had been appointed when the trials of the regicides came on. Foster, being one of them, distinguished himself for his zeal; and, when they were over, all scruples as to his fitness having vanished, he, who a few months before, shut up in his chamber that he might escape the notice of the Roundheads, never expected any thing better than to receive a broad piece for preparing a conveyance according to the recently invented expedient of "lease and release," was constituted the highest Criminal Judge in the kingdom.[1]

Oct. 22.

He presided in the Court of King's Bench for two

1. "M. T. 12 C. II. Memorandum que le primer jour de cest terme Sir Robert Foster, un des Justices del common Bank, feut jure Chiefe Justice del Banco Regis. Il prisant les serements del allegiance et supremacy generlerant (come lauter Justices font) queux serements fueront lege a luy hors del Rolle mesme et nemy hors del livre le Seigneur Chancellor seant sur le Banke et Foster esteant en le Court et nemy al barr."

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years. Being a deep black-letter lawyer, he satisfactorily disposed of the private cases which came before him, although he was much perplexed by the improved rules of practice introduced while he was in retirement, and he was disposed to sneer at the decisions of Chief Justice Rolle, a man in all respects much superior to himself. In state prosecutions he showed himself as intemperate and as arbitrary as any of the Judges who had been impeached at the meeting of the Long Parliament.

He brings about the conviction and execution of Sir Harry Vane. A.D. 1662.

To him chiefly is to be imputed the disgraceful execution, as a traitor, of one who had disapproved of the late King's trial; who was included in the present King's promise of indemnity from Breda;[1] in whose favor a petition had been presented by the Convention Parliament; who was supposed to be expressly pardoned by the answer to that petition;[2] but who had incurred the inextinguishable hatred of the Cavaliers by the part he had taken in bringing about the convic-

1. Charles II., in his *Declaration* from Breda, had promised that he should "proceed only against the immediate murderers of his royal father."

The Declaration of Breda (April 14, 1660) was the manifesto sent by Charles II. to both Houses of the Convention Parliament. By this the King granted a free and general pardon to all "who within forty days after the publishing hereof shall lay hold upon this our grace and favor, and shall by any public act declare their doing so," except such as Parliament should except. It also granted amnesty for all political offences committed during the civil war and the subsequent interregnum; promised that the King would rely on the advice and assistance of a free parliament; and declared a liberty to tender consciences, so "that no man shall be disquieted or called in question for differences of opinion in matter of religion." The King also undertook that no inquiry should be made into the titles of lands acquired under the Commonwealth, and that the arrears of Monk's officers and soldiers should be paid.—*Low and Pulling's Dict. of Eng. Hist.*

2. In answer to the address of the two Houses of the Convention Parliament to spare the lives of Vane and Lambert, the Lord Chancellor reported "His Majesty grants the desire of the said petition;"—the ancient form of passing acts of Parliament. The ultra-Cavalier House of Commons which followed desired Vane's death, but could not alter the law or abrogate the royal promise.

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The case stated.

tion of the Earl of Strafford.[1] Sir Henry Vane the Younger, after lying two years in prison, during which the shame of putting him to death was too strong to be overcome, was at last arraigned for high treason at the King's Bench bar. As he had actually tried to save the life of Charles I., the treason charged upon him was for conspiring the death of Charles II., whose life he would have been equally willing to defend.

The indictment.

The indictment alleged this overt act, "that he did take upon him the government of the forces of this nation by sea and land, and appointed colonels, captains, and officers." The Crown lawyers admitted that the prisoner had not meditated any attempt upon the natural life of Charles II., but insisted that, by acting under the authority of the Commonwealth, he had assisted in preventing the true heir of the monarchy from obtaining possession of the government, and thereby, in point of law, had conspired his death, and had committed high treason. Unassisted by counsel, and browbeaten by Lord Chief Justice Foster, he made

Vane's gallant defence.

a gallant defence; and, besides pointing out the bad faith of the proceeding after the promises of indemnity and pardon held out to him, contended that, in point of law, he was not guilty, on the ground that Charles II. had never been in possession of the government as King during any part of the period in question; that the supreme power of the state was then vested in the Parliament, whose orders he had obeyed; that he was in the same relation to the exiled heir as if there had been another king upon the throne; and that the statute of Henry VII., which was only declaratory of the common law and of common-sense, expressly provided

1. Burnet says, "The putting Sir Henry Vane to death was much blamed; yet the great share he had in the attainder of the Earl of Strafford, but, above all, the great opinion there was of his parts and capacity to embroil matters again, made the Court think it necessary to put him out of the way."

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that no one should ever be called in question for obeying, or defending by force of arms, a king *de facto*, although he had usurped the throne. He concluded by observing that the whole English nation might be included in the impeachment.

Foster's answer.

Foster, C. J.: "Had there been another king on the throne, though an usurper, you might have been exempted by the statute from the penalties of treason. But the authority you recognized was called by the rebels either 'Commonwealth' or 'Protector,' and the statute takes no notice of any such names or things. From the moment that the martyred sovereign expired, our lord the King that now is must be considered as entitled to our allegiance, and the law declares that he has ever since occupied his ancestral throne. Therefore obedience to any usurped authority was treason to him. You talk of the sovereign power of Parliament; but the law knows of no sovereign power except the power of our sovereign lord the King.[1] With respect to the number against whom the law shall be put in force, that must depend upon his Majesty's clemency and sense of justice. To those who truly repent he is merciful; but the punishment of those who repent not, is a duty we owe both to God and to our fellowmen."

The King's reluctance to sanction Vane's execution.

A verdict of *guilty* being returned, the usual sentence was pronounced; but the King, out of regard to his own reputation, if not to the dictates of justice and mercy, was very reluctant to sanction the execution of it till Chief Justice Foster, going the following day to Hampton Court to give him an account of the trial, represented the line of defence taken by the prisoner as inconsistent with the principles of monarchical

1. Sir Henry Vane, in an account of his case which he has left us, says, "On the day of my arraignment an eminent person was heard to say, 'I had forfeited my head by what I had said that day before ever I came to my defence:' what that should be I know not, except my saying in open court 'sovereign power of Parliament;' but whole volumes of lawyers' books pass up and down the nation with that title, 'SOVEREIGN POWER OF PARLIAMENT.'"—6 *St. Tr.* 186. This "eminent person" was most likely the Chief Justice of the Court of King's Bench.

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government, and said that the supposed promises of pardon were by no means binding, "for God, though ofttimes promising mercy, yet intends his mercy only for the penitent." The King, thus wrought on, notwithstanding his engagement to the contrary, signed the death-warrant, and Vane was beheaded on Tower Hill, saying with his last breath, "I value my life less in a good cause than the King does his promise." Mr. Fox, and other historians, consider this execution "a gross instance of tyranny," but have allowed Chief Justice Foster, who is mainly responsible for it, to escape without censure.[1]

Foster's cruel treatment of Quakers.

The arbitrary disposition of this Chief Justice was strongly manifested soon after, when John Crook and several other very loyal Quakers were brought before him at the Old Bailey for refusing to take the oath of allegiance:

His dialogue with Crook respecting the oath of allegiance.

Foster, C. J.: "John Crook, when did you take the oath of allegiance?" *Crook:* "Answering this question in the negative is to accuse myself, which you ought not to put me upon. '*Nemo debet seipsum prodere.*'[2] I am an Englishman, and I ought not to be taken, nor imprisoned, nor called in question, nor put to answer but according to the law of the land." *Foster, C. J.:* "You are here required to take the oath of allegiance, and when you have done that, you shall be heard." *Crook:* "You that are Judges on the Bench ought to be my counsel, not my accusers." *Foster, C. J.:* "We are here to do justice, and are upon our oaths; and we are to tell you what is law, not you us. Therefore, sirrah, you are too bold!" *Crook:* "*Sirrah* is not a word becoming a judge. If I speak loud, it is my zeal for the truth, and for the name of the Lord. Mine innocency makes me bold." *Foster, C. J.:* "It is an evil zeal." *Crook:* "No, I am bold in the name of the Lord God Almighty, the everlasting Jehovah, to assert the truth and stand as a witness for it. Let my accuser be brought forth." *Foster, C. J.:* "Sirrah, you are to take the oath, and

1. 6 St. Tr. 119–202.
2. "No one ought to accuse himself."

here we tender it you." *Crook:* "Let me be cleared of my imprisonment, and then I will answer to what is charged against me. I keep a conscience void of offence, both towards God and towards man." *Foster, C. J.:* "Sirrah, leave your canting." *Crook:* "Is this canting, to speak the words of the Scripture?" *Foster, C. J.:* "It is canting in your mouth, though they are St. Paul's words. Your first denial to take the oath shall be recorded; and on a second denial, you wear the penalties of a *præmunire*, which is the forfeiture of all your estate, if you have any, and imprisonment during life." *Crook:* "I owe dutiful allegiance to the King, but cannot *swear* without breaking my allegiance to the King of kings. We dare not break Christ's commandments: Who hath said, SWEAR NOT AT ALL; and the apostle James says, 'Above all things, my brethren, *swear not.*'"

Crook, in his account of the trial, says, "The Chief Justice thereupon interrupting, called upon the executioner to stop my mouth, which he did accordingly with a dirty cloth and a gag." The other Quakers following Crook's example, they were all indicted for having a second time refused to take the oath of allegiance; and, being found *guilty*, the Court gave judgment against them, of forfeiture, imprisonment for life, and moreover, that they were "out of the King's protection,"—whereby they carried about with them *caput lupinum*,[1] and might be put to death by any one as noxious vermin.[2]

The sentence for refusing to take the oath.

The last trial of importance at which Chief Justice Foster presided was that of Thomas Tonge and others, charged with a plot to assassinate the King. General Ludlow says that this was got up by the Government to divert the nation from their ill humor, caused by the sale of Dunkirk; the invention being "that divers thousands of ill-affected persons were ready under his command to seize the Tower and the City of London, then to march directly to Whitehall in order to kill the

Foster presides at the trial of Tonge and others for treason.

1. "A wolf's head."
2. 6 St. Tr. 201–226.

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King and Monk,[1] with a resolution to give no quarter, —and after that to declare for a Commonwealth."[2] The case was proved by the evidence of supposed accomplices, which was held to be sufficient without any corroboration. The Chief Justice seems to have been very infirm and exhausted; for thus he summed up:

His summing up.

"My masters of the jury, I cannot speak loud to you: you understand this business, such as I think you have not had the like in your time: my speech will not give me leave to discourse of it. The witnesses may satisfy all honest men: it is clear that they all agreed to subvert the government, and to destroy his Majesty: what can you have more? The prisoners are in themselves inconsiderable; they are only the outboughs; but if such fellows are not met withal, they are the fittest instruments to set up a Jack Straw and a Wat Tyler; therefore you must lop them off, as they will encourage others. I leave the evidence to you: go together."

The prisoners being all found guilty, the Chief Justice thus passed sentence upon them:

The sentence.

"You have committed the greatest crime against God, your King, and your country, and against every good body that is in this land; for that capital sin of high treason is a sin inexpiable, and, indeed, hath no equal sin as to this world. Meddling with them that are given to change, hath brought too much mischief already to this nation; and if you will commit the same sin, you must receive the same punishment, for happy is he who by other men's harms takes heed."

They were all executed, protesting their innocence.[3]

1. George Monk (*b.* 1608, *d.* 1670), English general; served in the royalist army in England and Ireland, but was made prisoner at Nantwich, and remained five years in the Tower. After his release he again commanded in Ireland, and was Cromwell's lieutenant in Scotland, but soon after the latter's death took the chief part in restoring Charles II., for which he received the dukedom of Albemarle. As admiral, he gained a great victory over the Dutch in 1666. He was buried in Westminster Abbey.—*Cassell's Biog. Dict.*

2. Memoirs.

3. 6 St. Tr. 225–274.

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The Chief Justice went a circuit after this trial, in the hope that country air would revive him. However, he became weaker and weaker, and, although much assisted by his brother Judge, he with great difficulty got to the last assize town. From thence he travelled by slow stages to his house in London, where, after languishing for a few weeks, he expired, full of days, and little blamed for any part of his conduct as a Judge, however reprehensible it may appear to us, trying it by a standard which he would have thought only fit to be proposed by rebels.[1] He was brought up among lawyers who deemed all resistance to power treasonable or seditious, and his zeal against those who professed liberal opinions may be excused when we consider the excesses which he had seen committed under pretence of a love of freedom. His cruelty to the poor Quakers admits of least apology; but it should be remembered that, till the Revolution of 1688, religious toleration was neither practised nor professed by any dominant faction; and if the Quakers, by the spread of fanaticism, had got the upper hand, there can be no doubt that they would have absolutely forbidden all Christians to take an oath, and would perhaps have punished with the penalties of *præmunire* the offence of using the names of months or days taken from the heathen mythology.

His death.

Apology for his false zeal and lack of toleration.

It has been said that "he was in a distinguished manner serviceable to the public in punishing the felonies and other outrages which proceeded from an old disbanded army, and in restraining the overgreat mercy of the King in his frequent pardons granted to such sort of criminals."[2]

His service to the public.

1. 1 Sid. 153.

2. Echard, p. 812a; Peck's Desiderata Curiosa, vol. ii. p. 543.

I ought to have mentioned that Sir Robert Foster was the youngest son of Sir Thomas Foster, Knt., one of the Justices of the Court of Common Pleas in the time of King James I. He was called to the bar by the

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Sir Robert Hyde, Chief Justice.

On the death of Sir Robert Foster, Lord Clarendon thought that he might fairly do a job for an aged kinsman, of respectable if not brilliant reputation; and he appointed SIR ROBERT HYDE Chief Justice of the King's Bench. They were cousins german, being grandsons of Lawrence Hyde, of West Hatch, in the county of Wilts, and nephews of Sir Nicholas Hyde, Chief Justice of the King's Bench in the commencement of the reign of Charles I. The Hydes were the most distinguished race of the robe in the 17th century. Robert's father was likewise a lawyer of renown, being Attorney General to Anne of Denmark, Queen of James I., and he had twelve sons, most of whom followed their father's profession. Robert seems to have been a very quiet man, and to have got on by family interest and by plodding. Although Edward, the future Chancellor, played such a distinguished part during the troubles,—first as a moderate patriot and then as a liberal conservative,—Robert, the future Chief Justice, was not in the House of Commons, nor did he enlist under the banner of either party in the field. Just before the civil war broke out,

His obscure rise.

Epitaph on Chief Justice Foster.

Society of the Inner Temple, and was "Summer Reader" of that house, 7 Charles I. He was buried at Egham, in Surrey. On a gravestone on the north side of the chancel there are these words: "Here lyeth buried the body of Sir Robert Foster, Knt., late Lord Cheif Justice of the King's at Westminster, who deceased the 4th of October, 1663." Above, on the north wall, is a monument of alabaster, with a bust of a judge in his robes and cap; over him these arms: 1st and 4th argent, a chevron vest between three bugle horns, sable; 2d and 3d argent on a bend sable, three martlets or; and below is this inscription: "Memoriæ sacrum Robertus Foster miles filius minimus natu Thomæ Foster militis, unius Justiciarior. de Communi Banco tempore Domini Regis Jacobi, ac ipsemet Justiciarius de eodem Banco Regnantibus Carolo Primo et Carolo Secundo, denique Banci Regis Justiciarius capitalis, obiit 4to die Octobris anno D'ni millesimo sexcentesimo sexagesima tertio; ætatis suæ 74." ["Sacred to the memory of Robert Foster, Knight, youngest son of Thomas Foster, Knight, Judge of the Common Pleas in the time of his Majesty King James; he himself was a Judge of the Common Pleas in the reigns of Charles I. and Charles II., and finally Chief Justice of the King's Bench. He died Oct. 4, 1663, aged 74 years."]—*Manning's Surrey*, p. 245.

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he was called to the degree of Sergeant-at-law, and he continued obscurely to carry on his profession during all the vicissitudes of the twenty eventful years between 1640 and 1660.

He is made a Puisne Judge.

At the Restoration he was made a Puisne Judge of the Common Pleas, and, acting under Chief Justice Bridgman, he acquitted himself creditably.[1]

Oct. 19, 1663.

When he was installed Chief Justice of the King's Bench, Lord Chancellor Clarendon himself attended in court, and thus addressed him:

Lord Clarendon's address to him on his installation as Chief Justice.

"It's a sign the troubles have been long, that there are so few Judges left, only yourself; and after so long suffering of the law and lawyers, the King thought fit to call men of the best reputation and learning, to renew the reverence due and used to the law and lawyers; and the King, as soon as the late Chief Justice was dead, full of days and of honors, did resolve on you as the ancientiest Judge left; and your education in this Court gives you advantage here above others, as you are the son of an eminent lawyer as any in his days, whose felicity was to see twelve sons, and you one of the youngest a Sergeant, and who left you enough, able to live without the help of an elder brother. For your integrity to the Crown, you come to sit here. The King and the kingdom do expect great reformation from your activity. For this reason, the King, when I told him Chief Justice Foster was dead, made choice of you. Courage in a judge is as necessary as in a general; therefore you must not want this to punish sturdy offenders. The genteel wickedness of duelling, I beseech you

1. It is curious to observe that upon the Restoration the Judges were at first appointed for life, although the old form *durante bene placito* was soon restored. The following is Hyde's patent as a Justice of C. P.: "Carolus Secundus, etc., Sciatis quod constituimus delectum et fidelem nostrum Robertus Hyde, servientem ad legem unum Justiciariorum nostrorum de Banco, habendum *quam diu se bene gesserit in eodem*, etc." ["Charles II., etc. Know that we have appointed our beloved and faithful Robert Hyde one of our Judges of the Common Pleas, to hold the office as long as he shall conduct himself well," etc.] (1 Sid. 2.) "Memorandum que le darrein vacation puis le circuit, Sir Robert Foster, le Chief Justice del Banco Regis mor. Et cest terme Sir Robert Hyde un des Justices del Co. Ba. fuit fait Cheife Justice de Banco Regis." (1 Sid.)

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inquire into; the carriers of challenges, and fighters, however they escape death, the fining and imprisoning of them will make them more dread this Court than the day of judgment."

His answer.

Hyde, C. J.: "I had ever thought of the advice of the wise man, 'not to seek to be a judge, nor ask to sit in the seat of honor,' being conscious of my own defects and small learning. But, seeing his Majesty's grace, I shall humbly submit, and serve him with my life with all alacrity and duty. Sins of infirmity I hope his Majesty will pardon, and for wilful and corrupt dealings I shall not ask it. I attended in Coke's time as a reporter here; and as he said when he was made Chief Justice I say now, 'I will behave myself with all diligence and honesty.'"[1]

He hangs a printer for printing a libel.

This Chief Justice was much celebrated in his day for checking the licentiousness of the press. A printer named John Troyn, having printed a book entitled "Phœnix, or the Solemn League and Covenant," containing passages which were said to reflect upon the King, was arraigned before him at the Old Bailey on an indictment for high treason. The prisoner being asked how he would be tried, said, "I desire to be tried in the presence of that God who is the searcher of all hearts, and the disposer of all things."

Hyde, L. C. J.: "God Almighty is present here, but you must be tried by him and your peers, that is, your country, or twelve honest men." *Prisoner:* "I desire to be tried by God alone." *L. C. J. Hyde:* "God Almighty looks down and beholds what we do here, and we shall answer severely if we do you any wrong. We are careful of our souls as you can be of yours. You must answer in the words of the law." *Prisoner:* "By God and my country."

The case stated.

It was proved clearly enough that he had printed the book, and some passages of it might have been considered libellous—but there was no other evidence against him, and he averred that he had unconsciously printed the book in the way of his trade.

Hyde, L. C. J.: "There is here as much villany and slan-

1. 1 Keble, 562.

der as it is possible for devil or man to invent. To rob the King of the love of his subjects, is to destroy him in his person. You are here in the presence of Almighty God, as you desired; and the best you can now do towards amends for your wickedness, is by discovering the author of this villanous book. If not, you must not expect, and, indeed, God forbid! there should be any mercy shown you." *Prisoner:* "I never knew the author of it." *Hyde, L. C. J.:* "Then we must not trouble ourselves. You of the jury, there can be no doubt that publishing such a book as this is as high treason as can be committed, and my brothers will declare the same if you doubt."

The jury having found a verdict of guilty, the usual sentence was pronounced by Lord Chief Justice Hyde, and the printer was drawn, hanged, and quartered accordingly.[1]

His sentence on the booksellers who published an account of the execution of the regicides.

The next trials before his Lordship, although the charge was not made capital (as he said it might have been), were equally discreditable to him. Several booksellers were indicted for publishing a book which contained a simple and true account of the trial of the regicides, with their speeches and prayers.

Hyde, L. C. J.: "To publish such a book is to fill all the King's subjects with the justification of that horrid murder. I will be bold to say no such horrid villany has been done upon the face of the earth since the crucifying of our Saviour. To print and publish this is sedition. He that prints a libel against me as Sir Robert Hyde, and he that sets him at work, must answer it; much more when against the King and the state. *Dying men's words*, indeed! If men are as villanous at their death as in their lives, may what they say be published as the words of dying men? God forbid! It is the King's great mercy that the charge is not for high treason."

The defendants, being found *guilty*, were sentenced to be fined, to stand several hours in the pillory, and to be imprisoned for life.[2]

1. 6 St. Tr. 513.
2. 6 St. Tr. 514–564.

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In the fervor of loyalty which still prevailed, such doctrines and such sentences were by no means unpopular; and while Chief Justice Hyde was cried up as an eminent Judge by the triumphant Cavaliers, the dejected Roundheads hardly ventured to whisper a complaint against him. To the great grief of the one party, and, no doubt, to the secret joy of the other, who interpreted his fate as a judgment, his career was suddenly cut short. On the 1st of May, 1663, as he was placing himself on the bench to try a dissenter who had published a book recommending the "comprehension," that had been promised by the King's Declaration from Breda, while apparently in the enjoyment of perfect health, he dropped down dead.[1]

His sudden death. May 1, 1663.

Sir John Kelynge, Chief Justice.

In consequence of this melancholy event, Lord Chancellor Clarendon was again thrown into distress by the difficulty of filling up the office of Chief Justice of the King's Bench, and he allowed it to remain vacant seven months. Only five years had yet elapsed since the Restoration, and no loyal lawyer of eminence had sprung up. At last the Chancellor thought he could not do better than promote SIR JOHN KELYNGE, then a *puisne*, to be the head of the Court. The appointment was considered a very bad one; and some accounted for it by supposing that a liberal contribution had been made towards the expense of erecting "Dunkirk House," which was exciting the admiration and envy of the town,—while others asserted that the collar of S.S. had been put round the neck of the new legal dignitary by the Duchess of Cleveland.[2] I believe that judicial patronage had

1. 2 Sid. 2; 1 Keb. 861; 1 Sid. 275; Sir Thomas Raymond, 139; Sir R. C. Hoare's Wiltshire, ii. p. 144.

2. Barbara Villiers, Duchess of Cleveland (*b.* 1640, *d.* 1709), was the daughter of Lord Grandison, and wife of Roger Palmer. About 1659

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not yet been drawn into the vortex of venality, and that Clarendon, left to the freedom of his own will, preferred him whom he considered the least ineligible candidate. But we cannot wonder at the suspicions which were generally entertained, for Sir John Kelynge's friends could only say in his favor that he was a "violent Cavalier," and his enemies observed that "however fit he might have been to *charge* the Roundheads under Prince Rupert, he was very unfit to *charge* a jury in Westminster Hall."

I can find nothing of his origin, or of his career, prior to the Restoration; and I am unable to say whether, like some loyal lawyers, he actually had carried arms for the King, or, like others, he had continued obscurely to practise his profession in London. The first notice I find of him is by himself, in the account which he has left us of the conferences of the Judges at Sergeants' Inn, preparatory to the trial of the regicides, when he says he attended that service as junior counsel for the Crown. He might have been employed from a notion that he would be useful in solving the knotty points likely to arise,[1] or (what is quite as likely), without any professional reputation,

He is junior counsel against the regicides.

she became one of Charles II.'s mistresses. In 1662 her husband was made Earl of Castlemaine, and it is as Lady Castlemaine that his wife is generally known. Her beauty and strong will gave her immense influence at Court, while in the number of her intrigues she almost eclipsed the King. In 1670 she was created Duchess of Cleveland, and shortly afterwards left England for France, where she spent the rest of her life. In 1705 she married Robert (Beau) Fielding; but the marriage was subsequently annulled, on the ground of the husband's having committed bigamy. Of her sons by Charles II., the eldest became Duke of Cleveland, the second Duke of Grafton, and the youngest Duke of Northumberland.—*Low and Pulling's Dict. of Eng. Hist.*

1. Among these was "whether the act of severing the head of Charles I. from his body could be alleged to have been committed in his own lifetime," and "whether it should be laid as against the peace of the late or of the present King?" Judge Mallet made the confusion more confounded by maintaining that by the law of England a day is indivisible; and that as Charles II. certainly was our lawful King during a part of that day, no part of it had been in the reign of Charles I.

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he might have got a brief by favor, in a case which was to draw the eyes of the whole world upon all engaged in it.

Oct. 1660

When the trials came on, he was very busy and bustling, and eagerly improved every opportunity of bringing himself forward. Before they were over, he took upon himself the degree of Sergeant-at-law, and, to his unspeakable delight, he was actually intrusted with the task of conducting the prosecution against Colonel Hacker,[1] who had commanded the guard dur-

He conducts the prosecution against Colonel Hacker.

1. Francis Hacker (*d.* 1660), regicide, was son of Francis Hacker of East Bridgeford. From the outbreak of the civil war Hacker vehemently supported the parliamentary cause, though the rest of his family seem to have been royalists. On July 10, 1644, he was appointed one of the militia committee for the county of Leicester, the scene of most of his exploits during the civil war. On Nov. 27, 1643, he and several others of the Leicestershire committee were surprised and taken prisoners at Melton Mowbray by Gervase Lucas, the royalist governor of Belvoir Castle. A month later Parliament ordered that he should be exchanged for Colonel Sands. At the capture of Leicester by the King in May, 1645, Hacker, who distinguished himself in the defence, was again taken prisoner. Hacker was nevertheless attacked for his conduct during the defence, but he was warmly defended in a pamphlet published by the Leicester committee. His services are there enumerated at length, and special commendation is bestowed on his conduct at the taking of Bagworth House and his defeat of the enemy at Belvoir, where he was in command of the Leicester, Nottingham, and Derby horse. Hacker is further credited with having freely given "all the prizes that ever he took" to the state and to his soldiers, and with having, while prisoner at Belvoir, refused with scorn an offer of "pardon and the command of a regiment of horse, to change his side." At the defeat of the royalists at Willoughby Field, in Nottinghamshire (July 5, 1648), Hacker commanded the left wing of the parliamentary forces. During the trial of Charles I., Hacker was one of the officers specially charged with the custody of the King, and usually commanded the guard of halberdiers which escorted the King to and from Westminster Hall. He was one of the three officers to whom the warrant for the King's execution was addressed, was present himself on the scaffold, supervised the execution, and signed the order to the executioner. While Cromwell lived he was a stanch supporter of the Protectorate; arrested Lord Grey in February, 1655, and was employed in the following year to suppress the intrigues of the Cavaliers and Fifth-monarchy Men in Leicestershire and Nottinghamshire. In Richard Cromwell's Parliament Hacker represented Leicestershire.

In the troubled period preceding the Restoration he followed generally the leadership of his neighbor, Sir Arthur Haslerig. By Haslerig's

ing the King's trial and at his execution. He learnedly expounded to the jury that the treason consisted in "compassing and imagining the King's death," and that the overt acts charged of *condemning him* and *executing him* were only to be considered evidence of the evil intention. He then stated the facts which would be proved by the witnesses, and concluded by observing—

"Thus did he keep the King a prisoner, to bring him before that Mock Court of Injustice; and was so highly trusted by all those miscreants who thirsted for the King's blood, that the bloody warrant was directed to him to see execution done. Nay, gentlemen, he was on the scaffold, and had the axe in his hand." *Hacker:* "My Lords, to save your Lordships trouble, I confess that I was upon the guard, and had a warrant to keep the King for his execution." (The original warrant being shown to him, he admitted it.) *Kelynge:* "After you had that warrant brought to you, did you, by virtue of it, direct another warrant for the execution of the King, and take his sacred Majesty's person from the custody of Colonel Tomlinson?" *Hacker:* "No, sir!" *Kelynge:* "We shall prove it."

persuasion, he, first of all the colonels of the army, accepted a new commission from the hands of the Speaker of the restored Long Parliament, and was among the first to own the supremacy of the civil power over the army. He opposed the mutinous petitions of Lambert's partisans in September, 1659, and, after they had expelled the Parliament from Westminster, entered into communication with Hutchinson and Haslerig for armed opposition. After the triumph of the Rump, he was again confirmed in the command of his regiment, and seems to have been still in the army when the Restoration took place. On July 5, 1660, he was arrested and sent to the Tower, and his regiment given to Lord Hawley. The House of Commons did not at first except him from the Act of Indemnity, but, during the debates upon it in the Lords, the fact came out that the warrant for the execution of the King had been in Hacker's possession. The Lords desired to use it as evidence against the regicides, and ordered him to produce it. Mrs. Hacker was sent to fetch it, and, in the hope of saving her husband, delivered up the strongest testimony against himself and his associates. The next day (Aug. 1, 1660) the Lords added Hacker's name to the list of those excepted, and a fortnight later the House of Commons accepted this amendment. Hacker's trial took place on Oct. 15, 1660. He made no serious attempt to defend himself. He was sentenced to death, and was hanged on Oct. 19, 1660.—*Dict. Nat. Biog.*

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Colonel Tomlinson was then examined, and detailed the circumstances of the execution, showing that Colonel Hacker had conducted the King to the scaffold under the original warrant,—what had been taken for a fresh warrant being a letter written by him to Cromwell, then engaged in prayer for the King's deliverance with General Fairfax.

Kelynge: "We have other witnesses, but the prisoner hath confessed enough. We have proved that he had the King in custody, and that at the time of the execution he was there to manage it. What do you say for yourself?" *Hacker:* "Truly, my Lord, I have no more to say for myself but that I was a soldier and under command. In obedience to those set over me I did act. My desire hath ever been for the welfare of my country." *L. C. Baron:* "This is all you have to say for yourself?" *Hacker:* "Yes, my Lord." *L. C. Baron:* "Then, Colonel Hacker, for that which you say for yourself that you did it by command, you must understand that no power on earth could authorize such a thing. Either he is guilty of compassing the death of the King, or no man can be said to be guilty."

Of course he was convicted and executed.[1]

A.D. 1662. Kelynge's part in the trial of Vane.

Sergeant Kelynge was soon after promoted to be a King's Sergeant; and in that capacity took a prominent part in the trial of Sir Henry Vane, who, not being concerned in the late King's death, was tried for what he had subsequently done in obedience to the Parliament, then possessed of the supreme power of the state. To the plea that his acts could not be said to be against the peace of Charles II., who was then in exile, Kelynge admitted that if another sovereign, although an usurper, had mounted the throne, the defence would have been sufficient; but urged that the throne must always be full, and that Charles II., in legal contemplation, occupied it while *de facto* he was wandering in foreign lands and ambassadors from all

1. 5 St. Tr. 947–1363.

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the states of Europe were accredited to Oliver, the Lord Protector.[1]

He is appointed a Puisne Judge of the King's Bench. June 18, 1663.

Kelynge having suggested this reasoning, which was adopted by the Court, and on which Vane was executed as a traitor, he was, on the next vacancy, made a Puisne Judge of the King's Bench. When he was to take his seat, Lord Chancellor Clarendon attended in that court, and thus addressed him:

Lord Clarendon's address to him.

"Mr. Sergeant Kelynge: The King's pleasure is to call you to be a Judge in this high court of law—not in the usual circumstance of death or vacancy, but in the place of one living. This is the great gift of God unto kings to judge the people, and the King cannot delegate a greater part of his prerogative than by granting commission to a subject to judge his fellows. There is no more misbecoming thing for a Christian man than seeking to be thus like God, to dispose of the blood of his subjects; but I absolve you, Mr. Sergeant, from any thing of this kind: you could have no thoughts of it till I brought the King's pleasure to you, and then you received it only with such alacrity as was fit for his service. This the King did in sight of your great ability and sufferings and assurances of constancy in his service; and therefore the people will have great cause to thank his Majesty. If this cannot introduce a love and veneration in the people of the Government, nothing but desolation can be expected."

Kelynge: "Although I cannot but return hearty thanks for so great favors, yet when I look on this supreme court and its jurisdiction I am much daunted. My twenty years' silence may have contributed to my inability, although not to hinder my industry. I acknowledge the effluxes of his Majesty's favor to be only by your Lordship's goodness, from which I beg that his Majesty may know with how much gratitude and humility I submit myself to his pleasure."[2]

His incompetency.

While Kelynge was a Puisne Judge, he made up, by loyal zeal and subserviency, for his want of learning and sound sense; but, from a knowledge of his incompetency, there was a great reluctance to promote

1. 6 St. Tr. 110–202.
2. 1 Keble, 526.

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him on the death of Lord Chief Justice Hyde. Sir Matthew Hale was pointed out as the fittest person to be placed at the head of the common law; but Lord Clarendon had not the liberality to raise to the highest dignity one who had sworn allegiance to the Protector, and there being no better man whom he could select, who was free from the suspicion of republican taint, he fixed upon the "violent Cavalier."

He is made Chief Justice. A.D. 1665.

Luckily there were no speeches at his installation. On account of the dreadful plague which was then depopulating London, the courts were adjourned to Oxford. "There, Kelynge, Puisne Judge, was made Chief Justice, and, being sworn at the Chancellor's lodging, came up privily and took his place in the logic school, where the Court of King's Bench sat. The business was only motions—to prevent any concourse of people. In London died the week before, 7165 of the plague, beside Papists and Quakers."[1]

The new Chief Justice even exceeded public expectation by the violent, fantastical, and ludicrous manner in which he comported himself. His vicious and foolish propensities broke out without any restraint, and, at a time when there was little disposition to question any who were clothed with authority, he drew down upon himself the contempt of the public and the censure of Parliament.

His vanity in wearing the collar of S.S.

He was unspeakably proud of the collar which he wore as Chief Justice, this alone distinguishing him externally from the puisnies, a class on whom he now looked down very haughtily. In his own report of the resolutions of the Judges prior to the trial of Lord Morley for murder, before the House of Lords, he considers the following as the most important

1. 1 Keble, 943; Sir T. Raym. 139. "M. T. 1665. En ceo term Sir Io Kelynge Justice de Banco Regis fuit fait Chief Justice la en lieu de Hyde. Mes leo ne fui al Oxford pr. reason del strictness del lieu et danger del infecon." (1 Sid. 275.)

"We did all, *una voce*, resolve that we were to attend at the trial in our scarlet robes, and the Chief Judges in their collars of S.S.—*which I did accordingly.*" [1]

He convicts of high treason apprentices who tried to put down disorderly houses.

There having been a tumult in an attempt by some apprentices to put down certain disorderly houses in Moorfields, which were a great nuisance to the neighborhood, and cries that no such houses should be tolerated, Chief Justice Kelynge, considering this "an *accroachment* of royal authority," directed those concerned in it to be indicted for HIGH TREASON; and, the trial coming on before him at the Old Bailey, he thus laid down the law to the jury:

How he laid down the law to the jury.

"The prisoners are indicted for levying war against the King. By levying war is not only meant when a body is gathered together as an army, but if a company of people will go about any public reformation, this is high treason. These people do pretend their design was against brothels; now for men to go about to pull down brothels, with a captain and an ensign, and weapons,—if this thing be endured, *who is safe?*" [2] It is high treason because it doth betray the peace of the nation, and *every subject is as much wronged as the King;* for if every man may reform what he will, no man is safe; therefore the thing is of desperate consequence, and we must make this for a public example. There is reason we should be very cautious; we are but newly delivered from rebellion, and we know that that rebellion first began under the pretence of religion and the law; for the Devil hath always this vizard upon it. We have great reason to be very wary that we fall not again into the same error. Apprentices in future shall not go on in this manner. It is proved that Beasely went as their captain with his sword, and flourished it over his head, and that Messenger walked about Moorfields with a green apron on the top of a pole. What was

1. 6 St. Tr. 769.

2. There must here have been a titter among the junior members of the bar in contemplation of the perils to which the reverend sages of the law had been exposed. I remember when a celebrated house in Chandos Street was burnt down in the night, and several lives were lost, it happened that term began next day, and, all the Judges being assembled at the Chancellor's, Lord Chief Baron Macdonald (I suppose having lately read this judgment of Chief Justice Kelynge) exclaimed, "It gives me heartfelt pleasure, my dear brethren, to see you all here quite safe."

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done by one was done by all; in high treason, all concerned are principals."

So the prisoners were all convicted of high treason; and I am ashamed to say that all the Judges concurred in the propriety of the conviction except Lord Chief Baron Hale, who, as might be expected, delivered his opinion that there was no treason in the case, and treated it merely as a misdemeanor.[1] Such a proceeding had not the palliation that it ruined a personal enemy, or crushed a rival party in the state, or brought great forfeitures into the Exchequer; it was a mere fantastic trick played before high heaven to make the angels weep.

His conduct on the circuit.

When Chief Justice Kelynge was upon the circuit, being without any check or restraint, he threw aside all regard to moderation and to decency. He compelled the grand jury of Somersetshire to find a true bill contrary to their consciences,—reproaching Sir Hugh Wyndham, the foreman, as the head of a faction, and telling them "that they were all his servants, and that he would make the best in England stoop."

He fines and imprisons jurymen.

Some persons were indicted before him for attending a conventicle;[2] and, although it was proved that they had assembled on the Lord's Day with Bibles in their hands, *without Prayer-books*, they were acquitted. He thereupon fined the jury 100 marks apiece, and imprisoned them till the fines were paid. Again, on the trial of a man for murder, who was suspected of being a Dissenter, and whom he had a great desire to

1. 6 St. Tr. 879–914.

2. The Conventicle Act (1664) enacted that any one over sixteen years of age present at an unlawful assembly or conventicle was to incur fine or imprisonment. A conventicle was defined as an assembly of more than five persons, besides the members of a family, met together for holding worship not according to the Church of England. In 1670 the act was amended, and the penalties greatly lessened, but a severe fine imposed on any one who lent his house for such meetings. The Conventicle Act was repealed by the Toleration Act of 1689.—*Low and Pulling's Dict. of Eng. Hist.*

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hang, he fined and imprisoned all the jury because, contrary to his direction, they brought in a verdict of *manslaughter*. Upon another occasion, (repeating a coarse jest of one whom he professed to hold in great abhorrence,)—when he was committing a man in a very arbitrary manner, the famous declaration in Magna Charta being cited to him, that "no freeman shall be imprisoned except by the judgment of his peers, or the law of the land," the only answer given by my Lord Chief Justice of England was to repeat, with a loud voice, Cromwell's rhyme, "MAGNA CHARTA—MAGNA ——A!!!"

His compliment to Magna Charta.

At last, the scandal was so great that complaints against him were brought by petition before the House of Commons, and were referred to the grand committee of justice. After witnesses had been examined, and he himself had been heard in his defence, the committee reported the following resolutions:

Dec. 1667. Proceedings against him in the House of Commons.

"1. That the proceedings of the Lord Chief Justice in the cases referred to us are innovations in the trial of men for their lives and liberties, and that he hath used an arbitrary and illegal power which is of dangerous consequence to the lives and liberties of the people of England.

"2. That, in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and condemned MAGNA CHARTA, the great preserver of our lives, freedom, and property.

"3. That the Lord Chief Justice be brought to trial, in order to condign punishment in such manner as the House shall judge most fit and requisite."

The matter assuming this serious aspect, he petitioned to be heard at the bar of the House in his own defence. Lord Chief Baron Atkyns, who was then present, says, "he did it with that great humility and reverence, that those of his own profession and others were so far his advocates that the House desisted from any farther prosecution." His demeanor seems now to have been as abject as it had before been in-

The prosecution dropped.

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solent, and he escaped punishment only by the generous intercession of lawyers whom he had been in the habit of browbeating in the King's Bench.[1]

He was abundantly tame for the rest of his days; but he fell into utter contempt, and the business of the Court was done by Twisden, a very learned judge, and much respected, although very passionate. Kelynge's collar of S.S. ceased to have any charms for him; he drooped and languished for some terms, and on the 9th of May, 1671, he expired, to the great relief of all who had any regard for the due administration of justice. No interest can be felt respecting the place of his interment, his marriages, or his descendants.

Twisden takes his place.

His death. May 9, 1671.

His Reports.

I ought to mention, among his other vanities, that he had the ambition to be an author; and he compiled a folio volume of decisions in criminal cases, which are of no value whatever except to make us laugh at some of the silly egotisms with which they abound.[2]

1. 1 Siderfin, 338; 6 St. Tr. 992–1019; Lord Campbell's Speeches, 175, 337.

2. Such is the propensity to praise the living and the dead who fill or have filled high judicial offices, that we have the following notice of the death of Sir John Kelynge, as if he had been a Hale, a Holt, or a Mansfield: "May 10, 1671. This day died Sir John Keeling, Knt., Lord Chief Justice of the King's Bench, about two of the clock of the morning, being the first day of Easter Term. He died much lamented for his great integrity and worth, after a long weakness and decay."—*Echard*, p. 878 b.; *Peck's Desid. Cur.* 549.

CHAPTER XVI.

LIFE OF LORD CHIEF JUSTICE HALE, FROM HIS BIRTH TILL THE RESTORATION OF CHARLES II.

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Happy transition to a meritorious Chief Justice.

We pass from one of the most worthless of Chief Justices to one of the most pure, the most pious, the most independent, and the most learned—from Kelynge to Sir Matthew Hale. Imperfections will mark every human character; but I have now to exhibit a rare combination of good qualities, and a steady perseverance in good conduct, which raised an individual to be an object of admiration and love to all his contemporaries, and have made him be regarded by succeeding generations as a model of public and private virtue. I cannot be satisfied, therefore, with giving merely a slight sketch of the more remarkable passages of his life; and it will be my fault if his whole career, from his cradle to his grave, is not found both interesting and instructive.

Origin of Sir Matthew Hale.

He had the advantage of being born in the middle rank of life, receiving a liberal education, and depending on his own exertions for distinction. We know nothing of his paternal ancestors higher than his grandfather, who made a considerable fortune, for those days, as a clothier, at Wotton-under-Edge, in Gloucestershire, and divided it equally among his five sons. Robert, the second of these, was educated for the bar, and married Joan, the daughter of Matthew Poyntz, Esq., of Alderley, a branch of the noble family of the Poyntzes of Acton. The subject of the present memoir was the only child of this marriage, and was born at Alderley, in Gloucestershire, on the 1st of November, Nov. 1, 1609.

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1609. Here Mr. Robert Hale lived penuriously on a small estate which he had purchased with his patrimony, assisted by the fortune of his wife. He might have obtained great success in his profession, but he had given it up from scruples of conscience, being much shocked with legal fictions—above all, with "giving color in pleading, which, as he thought, was to tell a lie."[1]

He is brought up a Puritan.

While the future Chief Justice was only in his fifth year, he had the misfortune to lose both his parents; and he became the ward of his kinsman, Mr. Kingscot, of Kingscot, who was of an ancient family, but was a noted Puritan. By this gentleman he was put to school with a clergyman of the same rigid principles, who is called by the orthodox Anthony Wood "one Mr. Staunton, the scandalous vicar of Wotton-under-Edge."[2] The intention was that young Hale should not only be imbued with a proper horror of the rites and ceremonies of the Anglican discipline, which those inclined to the Genevese denominated "flat popery," but that he should himself be bred a divine, and should actively engage as a minister in propagating the true reformed faith. In consequence, religious impressions were now made upon him which never were effaced. For a time, as we shall find, he frequented stage-plays, and, despising all peaceful pursuits, he prized only military glory. But when these illusions had passed away, his manners and his modes of thinking were strongly tinctured, to his dying day, by his early training under a Puritanical teacher.

Hale at school.

While at school he had a high reputation for diligence, and here he must have formed the studious

1. Burnet's Life of Hale, p. 2. This is a mysterious contrivance to enable a defendant to refer the validity of his title to the judges instead of the jury, by introducing an untrue allegation respecting an entry under a pretended title, which does not deceive or injure any one.—3 Bl. Com. 309.

2. Athen.

habits which, amidst great temptations, and after some youthful errors, secured his advancement and his fame. CHAP. XVI.

He was not sent to the University till he was sixteen. Then he was entered of Magdalene Hall, Oxford, and placed under the tuition of Obadiah Sedgwick,[1] who, though a noted Puritan, was deeply imbued with classical learning. In the next generation the Puritans in general undervalued human learning, but in the early part of the 17th century they could exhibit a greater number both of eminent mathematicians and of distinguished scholars than those who under Laud wished to approximate to Rome. A.D. 1625. At the University.

Our undergraduate, simple in his attire, and rather ascetic in all his habits, devoted himself very steadily, for some terms, to the writings of Aristotle and Calvin, being regular in his attendance, not only in chapel, but at prayer-meetings in private houses,—till a strolling company of actors coming to Oxford, "he was so much corrupted by seeing many plays that he almost wholly forsook his studies." All of a sudden, there seemed to be a complete transformation of his character. "He loved fine clothes, and delighted much in company; and, being of a strong and robust body, he was a great master at all those exercises that required much strength. He also learned to fence and handle his weapons, in which he became so expert that he worsted many of the masters of those arts." A troop of sycophants, eager to minister to his vanity, surrounded him; but he escaped from their toils, without being ruined in his fortune or becoming a misanthrope. His fencing-master having said to him, "I can teach A.D. 1625—1629. He becomes fond of stage-plays, and a fop.

1. Obadiah Sedgwick, born at Marlborough, Wilts, 1600, and educated at Queen's College, Oxford. He became chaplain to Sir Horatio Vere, whom he accompanied in his expedition to the Low Countries. In the time of the rebellion he was a frequent preacher before the Parliament, and a member of the Assembly of Divines. He died at Marlborough in January, 1657-58.—*Cooper's Biog. Dict.*

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How he learned to distinguish flattery from truth.

you no more, for you are now better at my own trade than myself," he answered, "I promise to give you the house you live in, as my tenant, if you can break my guard and hit me: now do your best, for I will be as good as my word." The fencing-master, being really much superior to him in skill, after a little skirmishing, struck him a palpable hit on the head. Mr. Hale performed his promise, and unhesitatingly gave him the house, "not unwilling at that rate to learn so early to distinguish flattery from truth."[1] We are told that, amidst all his dissipation, he "still preserved his purity, and a great probity of mind." But at this time, from the company which he kept and the occupations which he followed, he abandoned all notion of being a clergyman, and he resolved to be a soldier. Whilst under this martial ardor, it so happened that the tutor of his college was proceeding to the Low Countries as chaplain to the renowned Lord Vere. Hale, hearing of his destination, was about to accompany him, that he might *trail a pike* under the Prince of Orange. His relations tried to dissuade him from this enterprise, advising him, if he had contracted a distaste for the Church, to follow the profession of his father. But he answered,—

He is about to serve abroad as a soldier.

> "Tell not us of issue male,
> Of simple fee and special tale,
> Of feoffments, judgments, bills of sale,
> And leases:
>
> "Can you discourse of hand-grenadoes,
> Of sally-ports and ambuscadoes,
> Of counterscarps, and palisadoes,
> And trenches?"

Thus the pious and reverend Judge might have turned out a "Captain Dalgetty,"[2] passing as a mer-

1. Burnet's Life of Sir Matthew Hale, p. 3.

2. Rittmaster Dugald Dalgetty, a soldier of fortune in Sir Walter Scott's "Legend of Montrose," distinguished for his pedantry, conceit, valor, vulgar assurance, knowledge of the world, greediness, and a

Sir Alexander Hay Bt

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cenary from the service of one military leader to that of another, learning to swear strange oaths and to carouse "potations pottle-deep."

How he took to the study of the law.

From this fate he was saved by an unjust attempt to deprive him of a part of his patrimonial estate, and the commencement of a lawsuit against him. Before setting off for the Continent, he went to London to give instructions for his defence. His leading counsel was the learned Sergeant Glanvil,[1] with whom he had many consultations, and to whom he confided all his plans. This great lawyer succeeded in giving Hale's enthusiasm a new direction; and, pointing out the imminent danger to his religion and morals, as well as to his life, from a military career, and the good he might do, as well as the honor and riches he might acquire, by following the profession of the law, at last induced him to exclaim, "*Cedant arma togæ!*"[2] Accordingly, on the 8th day of November, 1629, "Mat- Nov. 8, 1629. theus Hale, filius unicus et hæres Roberti Hale, generosi,"[3] was admitted a member of the Honorable Society of Lincoln's Inn, to which he was to become a bright ornament and a munificent benefactor.[4]

hundred other qualities, making him one of the most amusing, admirable, and natural characters ever drawn by the hand of genius.

1. Sir John Glanvil was the son of John Glanvil of Tavistock, Devonshire, a Judge of the Common Pleas, who died in 1600. He was educated at Oxford, after which he studied at Lincoln's Inn, and in 1639 was made a Sergeant. The year following he was elected Speaker of the House of Commons, and in 1641 appointed one of the King's Sergeants, and knighted. The ruling party, upon this, deprived him of his seat in Parliament, and sent him to prison, where he remained till 1648. At the Restoration he was again made King's Sergeant, and would have obtained higher promotion had he not been taken off by death, Oct. 2, 1661.—*Cooper's Biog. Dict.*

2. "Let arms yield to the toga!"

3. "Matthew Hale, only son and heir of Robert Hale, of noble birth."

4. The custom for law-students to be first entered of an Inn of Chancery before being admitted of an Inn of Court, which had prevailed in Lord Coke's time, seems now to have become obsolete, and the Inns of Chancery were entirely abandoned to the attorneys.

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His vow never again to see a stage-play.

The theatre was the temptation he dreaded, and, believing that he could not enjoy this amusement in moderation, he began with making a vow, which he strictly kept, "never to see a stage-play again." Writing to his grandchildren seven-and-forty years after, he warns them against the frequenting of stage-plays, "as they are a great consumer of time, and do so take up the mind and fantasy that they render the ordinary and necessary business of life unacceptable and nauseous;" going on to describe his own case, and how he had conquered his passion for this recreation.

His vow against drinking healths.

However, he continued to keep company with some of his old associates, and ran a serious risk of being again drawn into idle courses; till, at a merry-making, with other young students, at a village near London, one of the company drank so much as to fall down seemingly dead before them. "This did particularly affect Mr. Hale, who thereupon went into another room, and, shutting the door, fell on his knees, and prayed earnestly to God both for his friend, that he might be restored to life again, and that himself might be forgiven for giving such countenance to so much excess; and he vowed to God that he would never again keep company in that manner, or drink a health, while he lived. His friend recovered, and he most religiously observed his vow till his dying day; and, though he was afterwards pressed to drink healths, particularly the King's, which was set up by too many as a distinguishing mark of loyalty, and drew many into great excess after his Majesty's happy restoration, he would never dispense with his vow; though he was sometimes roughly treated for this, which some hot and indiscreet men called obstinacy."[1]

1. Burnet, p. 5. In those times, the command we receive at public dinners, "Gentlemen, charge your glasses, BUMPERS!" and which we can sufficiently satisfy by holding up a glass which has long been empty, and joining in the "hip, hip, hurrah!" with "one cheer more,"

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Hale at Lincoln's Inn. A.D. 1630—1637.

He now abjured all gay company, and spent sixteen hours a day in study, laying down rules for himself, which are still extant, in his handwriting, and which show that, amidst all his ardor for the acquisition of knowledge, he never forgot his religious duties.[1] From being a noted fop since the latter part of his residence at Oxford, he was remarkable for the slovenliness of his apparel; of which we have a proof from a danger he encountered of being forced into the wars, after his military mania had entirely subsided. Taking a walk one evening for his health, on Tower Hill, and meeting a press-gang, he was supposed, from his appearance, to be in a very low condition of life, and, being strong and well-built, he was seized as a fit person for the King's service. He would have been speedily shipped off for the West Indies, had it not been that luckily several students of Lincoln's Inn, who knew him, were passing by, and they vouching that he was of gentle degree, notwithstanding the tattered condition of his doublet and hose, he was set at liberty. He thereupon went to buy cloth for a plain new suit; and, making some difficulty as to price, the draper, who had heard much of his abilities and diligence from other customers, said,—"You shall have it

He is taken by a press-gang.

was then rigidly enforced; every man who was not under a vow being compelled to fill a bumper to every toast, and by reversing his glass to show that it was drained to the bottom. Sir Matthew Hale, in his advice to his grandchildren, says, "I will not have you begin or pledge any health, for it is become one of the greatest artifices of drinking, and occasions of quarrelling, in the kingdom. If you pledge one health, you oblige yourself to pledge another, and a third, and so onwards; and if you pledge as many as will be drank, you must be debauched and drunk. If they will needs know the reason of your refusal, it is a fair answer, 'that your grandfather that brought you up, from whom, under God, you have the estate you enjoy or expect, left this in command with you, that you should never begin or pledge a health'" (p. 156). The expedient of putting little or no wine into the glass never seems to have been thought of.

1. Burnet, p. 6. These Rules have been greatly too much praised: beyond their spirit of piety, they have little to recommend them.

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for nothing, if you will promise me 100*l.* when you come to be Lord Chief Justice of England." He answered, "I cannot with a good conscience wear any man's cloth unless I pay for it." So he satisfied the draper, and carried away the cloth. They afterwards met, and recounted this conversation, in the reign of Charles II., when the law-student had risen to be Chief Justice of England, and the draper to be an alderman of London.

His mode of acquiring a knowledge of law.

Hale continued to keep terms at Lincoln's Inn above seven years, undergoing labor at which, in our degenerate days, the most industrious would tremble; and before he was called to the bar he had professional knowledge which would furnish a good stock in trade for all Westminster Hall. He not only read over and over again all the Year-Books, and Reports, and law treatises in print, but, visiting the Tower of London, and other antiquarian repositories, he went through a course of records from the earliest times down to his own, and acquired a familiar acquaintance with the state and practice of English jurisprudence during every reign since the foundation of the monarchy. From his reading and researches he composed what he called a *Commonplace Book;* but what may, in reality, be considered a CORPUS JURIS, embracing and methodizing all that an English lawyer, on any emergency, could desire to know.[1]

His "Commonplace Book."

Nor did he, like the great bulk of English jurists, confine himself to our municipal law; he studied juris-

1. We still have it among his other MSS. in Lincoln's Inn, and I have examined it with admiration. Burnet says, "An eminent Judge of the King's Bench borrowed it of him when he was Lord Chief Baron. He unwillingly lent it, because it had been writ by him before he was called to the bar, and had never been thoroughly revised by him since that time. But the Judge having perused it, said, 'that though it was composed by him so early, he did not think any lawyer in England could do it better, except he himself would again set about it.'"

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prudence liberally and on principle, not as a mere money-making trade. He devoted himself to the study of the Roman law, saying that "a man could never understand law as a science so well as seeking it there;" and he lamented much that it was so little studied in England.[1]

His other studies.

He was likewise resolved not to be a mere lawyer, his maxim being that "no man could be absolutely master in any profession without having some skill in other sciences." Accordingly, he made great proficiency in arithmetic, algebra, and pure mathematics; he attended much to natural philosophy; he became well versed in anatomy; "and in his sickness he used to argue with his doctors about his distempers like one of their own profession."[1]

His thrifty application of his time.

All these wonders he accomplished by a thrifty application of his time. None of it was wasted in vain amusements; and his repasts were so temperate, that immediately after them he was fit for any mental exertion. Change of study was his relaxation, and he forgot the fatigue of mastering a case in Plowden or Coke when he set to work on "the Torricellian experiment, and the rarefaction and condensation of the air." He would not haunt frivolous company, and he avoided epistolary correspondence as an unprofitable consumption of time. Yet he loved to converse with those from whom he might derive solid instruction; and he carried on a friendly intercourse with Selden, the illustrious antiquary, and Vaughan, who was one day, as Chief Justice, to acquire such renown by establishing the independence of juries.[2]

His great patron was Noy, afterwards Attorney General, now a patriot, and distinguished only for his deep learning and liberal accomplishments. Hale

1. Burnet, p. 8.
2. Bushell's Case, 6 St. Tr. 967.

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His name of "Young Noy."

went by the name of "Young Noy," and might have found a short cut to fortune, when the patriotic lawyer, who had assisted in carrying the PETITION OF RIGHT, became the slave of an arbitrary Court; but our *débutant* preferred his independence to his interest, and refused to be concerned in manufacturing the writ of "Ship-money."

Considering his wonderful proficiency, there can be little doubt that, if he had been so inclined, the usual period then prescribed for remaining *in statu pupillari* at the Inns of Court might have been abridged; but he looked for solid fame rather than early profit or notoriety, and he was not called to the bar till he was in the 28th year of his age.

He is called to the bar. A.D. 1637.

His early practice. A.D. 1637–1640.

As soon as he had put on the long robe he was in full business; but he was at first chiefly employed as a consulting or chamber counsel. He had neither a natural flow of eloquence, nor boldness of manner, nor a loud voice. He therefore seems long to have been thought unfit for jury trials, or Star Chamber practice; and, even when retained on demurrers and special verdicts before the Judges in Westminster Hall, he was more eager to supply arguments and authorities to his leaders than to gain *éclat* for himself. When obliged to take the lead, he was an enemy to all eloquence or rhetoric in pleading. He said, "If the judge or jury had a right understanding, it signified nothing but a waste of time and loss of words; and if they were weak and easily wrought on, it was a more decent way of corrupting them by bribing their fancies, and biassing their affections: and wondered much at that affectation of the French lawyers in imitating the Roman orators in their pleadings,—for the oratory of the Romans was occasioned by their popular government, and the factions of the city, so that those who intended to excel in the pleading of

His aversion to eloquence in pleading.

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causes were trained up in the schools of the Rhetors till they became ready and expert in that luscious way of discourse. He therefore pleaded himself always in few words, and home to the point."[1]

His early scruples about causes that appeared unjust.

He began with the specious but impracticable rule of never pleading except on the right side—which would make the counsel to decide without knowing either facts or law, and would put an end to the administration of justice. "If he saw a cause was unjust, he for a great while would not meddle further in it but to give his advice that *it was so;* if the parties after that would go on, they were to seek another counsellor, for he would assist none in acts of injustice. Yet, afterwards, he abated much of the scrupulosity he had about causes that appeared at first view unjust."[2] He continued to plead with the same sincerity which he displayed in the other parts of his life; and he used to say, "It is as great a dishonor as a man is capable of to be hired, for a little money, to speak or to act against his conscience."[3]

His modesty and courtesy.

Although he was laughed at by many for his peculiarities, his merit was fully appreciated by the discerning; and in the course of a few years he was at the very top of his profession. Still he was unassuming and courteous. "His modesty was beyond all example; for, where some men who never attained to half his knowledge have been puffed up with a high conceit of themselves, and have affected all occasions of raising their own esteem by depreciating other men, he, on the contrary, was the most obliging man that

1. Burnet, p. 40. 2. Burnet, p. 46.

3. Burnet pays him a compliment which shows a very lax state of feeling at the bar in those days: "He abhorred those too common faults of misreciting evidences, quoting precedents or books falsely, or asserting things confidently, by which ignorant juries or weak judges are too often wrought on." The *over-confident assertion*, I fear, continues; but I have never known more than one counsel threatened with being obliged to "cite his cases on affidavit."

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ever practised. If a young gentleman happened to be retained to argue a point of law, where he was on the contrary side, he would very often mend the objections when he came to repeat them, and always commend the gentleman if there were room for it;—and one good word of his was of more advantage to a young man than all the favor of the court."[1]

Such was Hale's reputation, that, when the Long Parliament was about to assemble, both parties in the state were eager to enlist him in their ranks.

His conduct when the troubles broke out. A.D. 1640—1643.

His conduct at this crisis has been much commended, but I must say that I think it was cowardly and selfish. If he had approved of the government by prerogative, which had prevailed for eleven years since parliaments had been discontinued, it was his duty to have allowed himself to be returned for a treasury borough, and gallantly to have defended the levying of benevolences, the legality of Ship-money, and the atrocities of the Star Chamber and Court of High Commission. In his heart he was a lover of liberty and of the constitution: therefore he ought to have accepted the offer of a seat made to him by Pym, Hampden, and Whitelock, and to have assisted them in correcting abuses, and bringing delinquents to justice. But he declared himself neutral—saying that "he was resolved to follow the example of Pomponius Atticus,[2] who had passed through a time of as much

1. Character of Hale by Lord Nottingham; Burnet, p. 57.

2. Titus Pomponius Atticus (*b.* B.C. 109, *d.* B.C. 32), an eminent Roman, of patrician birth, great wealth, and high intellectual ability, and remembered as the friend of Cicero, who wrote to him the celebrated series of letters. During the civil wars between Sylla and Marius he removed to Athens, where he spent twenty years, and rendered many services to the citizens, who raised statues in his honor. Recalled by Sylla in 65 B.C., he resided in Rome. He had no ambition, made a generous use of his great wealth, and during the civil wars was able to be on friendly terms with men of all parties. He starved himself to death to avoid other physical sufferings.—*Appl. Encyc.*, vol. ii. p. 94.

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destruction as ever was in any age or state, without the least blemish on his reputation, and free from any considerable danger, being held in great esteem by all parties, and courted and favored by them." He therefore not only would not serve in parliament, and refused all public employment, but avoided the very talking of news; and Burnet pays him this wretched compliment,—"he was sure never to provoke any by censuring or reflecting on their actions, for many that have conversed much with him have told me they never heard him once speak ill of any person." Calumny, censoriousness, and uncharitableness are to be shunned; but the best interests of society require that bad actions should be censured in private society, as well as punished by the magistrate.

Qu. whether he was counsel for Lord Strafford?

It is said that Hale was "assigned counsel for the Earl of Strafford,"—but he never appeared for him in public with Lane and his other counsel, and, if he was at all concerned in the defence, it could only have been in preparing the answer to the articles of impeachment, or attending a consultation respecting the mode of opposing the bill of attainder. He certainly was one of the counsel for Archbishop Laud. The able argument of Herne, who was leader, to prove that nothing which the most reverend prisoner had said or done amounted to treason by any known law of the kingdom, was prepared by Hale. Sergeant Wilde contending that all the misdemeanors "accumulatively were tantamount to treason," Herne replied (I know not whether prompted by his junior), "I crave your mercy, good Mr. Sergeant; I never understood before this time that two hundred couple of black rabbits will make a black horse." [1]

Counsel for Laud.

Hale was, soon after, counsel for Lord Macguire, one of the leaders of the Irish massacre; and argued

Counsel for Macguire.

1. 4 St. Tr. 315, 577, 586.

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against Prynne, with great depth of learning, the question "whether an Irish peer was liable to be tried by a jury in England for high treason committed in Ireland?" The prisoner was convicted and executed, but Hale by this defence acquired such reputation that he was employed in every following state prosecution while he remained at the bar.[1]

A.D. 1644. He takes the Covenant, and sits in the Assembly of Divines at Westminster.

The cause of the Parliament gaining the ascendency, Hale signed the SOLEMN LEAGUE AND COVENANT, and served as a member of the famous Assembly of Divines at Westminster who framed the standards of the true Presbyterian faith. At no period of his life did he consider any form of church government essential to the enjoyment of the blessings of the Gospel. The system which he had pledged himself to "extirpate" was only what he called "the rampant exclusiveness of a semi-popish hierarchy," — and though he stoutly denied the necessity for episcopal ordination, and preferred the Presbyterian polity of the reformed churches abroad, he did not object to a modified episcopacy such as had been proposed by Archbishop Usher, and he never countenanced the wild doctrines of the Independents or Anabaptists.

A.D. 1645. He treats for the surrender of Oxford.

At the conclusion of hostilities, when Oxford alone stood out for the King, and there was great danger, from the fury of some of the parliamentary leaders, that this city might be laid in ashes, Hale was induced, by his affection for his ALMA MATER, to serve as one of the commissioners appointed to treat for its reduction. Accordingly, by his intercession, honorable terms were granted to the royal garrison, and the inestimable treasures contained in the public libraries were preserved. Notwithstanding his low-church tendencies, the members of the University always thought well of him for this good turn, and

1. 4 St. Tr. 702.

afterwards sent him to parliament as one of their representatives. CHAP. XVI.

He was now most earnestly desirous to see an accommodation brought about between the King and the Parliament. He remained a decided friend to monarchy, although he was of opinion that the excesses of prerogative ought to be effectually restrained, —and he approved of the terms offered to Charles I. in the Treaty of Newport,[1] which he afterwards vainly attempted to make the basis of the restoration of Charles II. But Cromwell and the Independents became possessed of supreme power, which they were resolved to continue in their own hands, under pretence of establishing the reign of the saints on earth. Henceforth the "Blessed Martyr" showed a constancy and dignity which almost make us forget his past errors. "When brought to the infamous pageantry of a mock trial, Hale offered to plead for him with all the courage that so glorious a cause ought to have inspired; but was not suffered to appear, because the King refusing, as he had good reason, to submit to the

A.D. 1648, 1649 Tries to bring about a settlement between the King and the Parliament.

Qu. whether he was counsel for Charles I.?

1. The Treaty of Newport (1648). In spite of the vote that no more addresses should be made to the King (Jan. 15, 1648), the Presbyterian majority in Parliament seized the opportunity of the second civil war to open fresh negotiations. On July 3 the resolutions of January were rescinded, and it was agreed (July 28) that efforts should be made to enter into a general and open treaty with Charles, and that the place of negotiation should be Newport in the Isle of Wight (Aug. 10). The parliamentary commissioners, five lords and ten commoners, arrived in the island on Sept. 15, and the negotiations began three days later. The negotiations continued till Nov. 27, as the King argued every point, and delayed to give decided answers in the hopes of escaping, or being freed by help from France or Ireland. He offered to consent to the establishment of Presbyterianism for three years, but would not agree to the abolition of bishops. His answers on the Church question, and the question of the "delinquents," were both voted unsatisfactory (Oct. 26–30). Nevertheless, on Dec. 5 the House of Commons, by 129 to 83 voices, voted "that the answers of the King to the propositions of both Houses are a ground for the House to proceed upon for the settlement of the peace of the kingdom."—*Low and Pulling's Dict. of Eng. Hist.*

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court, it was pretended none could be admitted to speak for him."[1]

He takes the engagement to the Commonwealth.

Hale, having done his duty to his sovereign, thought that it became him as a good citizen to submit to the government which Providence permitted to be established. Accordingly he took *the engagement* "to be true and faithful to the Commonwealth of England, without a King or House of Lords." This was substituted for the old oath of allegiance, and required only subscription without adjuration; but all persons were obliged to submit to it as a qualification to hold any office or employment, or publicly to exercise any profession.[2] Some blind idolaters of Hale represent that, refusing to conform, he always declared the exiled heir to the Crown alone to be entitled to his obedience.[3] We know the contrary, however, from his own mouth. Appearing before the High Court of Justice as counsel for Christopher Love, he was asked by Lord President Bradshaw "whether he had taken the engagement?" and he answered, "My Lord, I have done it."[4]

Vaughan's different course.

Vaughan followed a different course, ever refusing by act or speech to sanction what he called "rebellion" and "usurpation;" hiding his loyalty amidst the fastnesses of Wales,—never taking a fee from the commencement of the troubles till the Restoration,—and, when pressed to plead for those who wished to make use of his abilities, saying, "It is the duty of an honest man to decline, as far as in him lies, owning jurisdictions that derive their authority from any power but their lawful prince."[5] On principle, however, it can

1. Burnet, p. 11. There has been a controversy whether Hale really was counsel for Charles I., but we may safely believe that he was consulted as to the line of defence to be adopted, and that he advised his royal client resolutely to deny the jurisdiction of the Court.

2. Scobell's Acts, 2d January, 1649–50.

3. Burnet, p. 12.

4. 5 St. Tr. 211.

5. 6 St. Tr. 129.

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make no difference for this purpose, whether, upon a revolution, the supreme power is vested in a new sovereign with the ancient title of our chief magistrate, or in a PROTECTOR; and the famous statute of Henry VII. makes us safe while we obey a king *de facto*. Instead of emigrating, or withdrawing from public life, it may be the duty of a good citizen, after having strenuously resisted the revolutionary movement, to adhere to a government which he condemns, and to do his utmost to soften its violence.[1]

Story of the hiding of Hale's "Pleas of the Crown."

Of a piece with Hale's supposed refusal to take the engagement to the Commonwealth, is the story of his having on the execution of Charles I. hid behind the wainscoting of his study his "Pleas of the Crown," to prevent their falling into ill hands, exclaiming, "There will be no more occasion for them until the King shall be restored to his right." In truth, the criminal law of the country remained almost entirely unchanged, and Hale was still constantly conversant with its administration at the bar and on the bench—requiring all the stores of his learning on this subject for his assistance.[2]

He is counsel for all whom Cromwell prosecuted for state offences.

He had become, beyond competition, the first advocate in Westminster Hall, and he led with great boldness the defences of those who were prosecuted by the Protector for political offences. He particularly distinguished himself on the trial of the Duke of Hamilton, indicted for high treason because he had invaded England as leader of a Scottish army. The pleas were,—

A.D. 1649. His defence of the Duke of Hamilton.

"1. That he was born in Scotland and an alien in England, so as not to be triable here. 2. That he had acted in the name of the King of Scotland, and by the commands of the Parliament of the kingdom which he was bound to obey. 3. That he had

1. So thought Sir Michael Foster (4th Discourse); and so thought Edmund Burke.

2. See Burnet, p. 13; Williams's Life of Hale, p. 28.

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capitulated under articles by which his personal safety was expressly stipulated for."

But, in spite of unanswerable reasoning, all these were overruled by the High Court of Justice, and the Duke was executed as a traitor.[1]

A.D. 1651. His defence of Christopher Love.

Hale's leaning towards Presbyterianism made him particularly zealous in defending Christopher Love,[2] although Cromwell had declared that "he would not march into Scotland till he had the head of this apostle of the Covenant." For six days was the argument kept up on the pretended overt acts of treason charged, which were all shown to have no support by common law, statute, or ordinance. But on the seventh morning, "without so much as praying for the King, otherwise than that he might propagate the Covenant, he laid his head upon the block with as much courage as the bravest and honestest man could do in the most pious occasion."[3]

His defence of Lord Craven.

Hale's last appearance at the bar was in Lord Craven's case. Of this we have no account in the "Reports;" but Burnet, who had conversed with those who were present, says that "he then pleaded with such force of argument, that the Attorney General threatened him for appearing against the Government; when he answered, 'I am pleading in defence of those laws which you declare you will maintain and preserve, and I am doing my duty to my client—so that I am not to be daunted with threatenings.'"[4]

1. 4 St. Tr. 1155.

2. Christopher Love, a Presbyterian divine, born at Cardiff 1618. He studied at Oxford, and took orders; after which he became a bitter enemy to the Church of England, and was ordained again by the hands of presbyters 1644. He was one of the commissioners for the Parliament at the Treaty of Uxbridge, where he behaved with such insolence as to offend his own party. He was also one of the Assembly of Divines, and chosen minister of St. Lawrence, Jewry; yet he signed the declaration against the murder of the King. After this he was concerned in a plot against Cromwell and the Independents, for which he was tried and beheaded Aug. 22, 1651.—*Cooper's Biog. Dict.*

3. Clarendon; 5 St. Tr. 268.

4. Burnet, pp. 11, 12.

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His generosity to the royalists.

It should likewise be related, that Hale not only was ready to render his best professional assistance to poor royalists without a fee, but "he also relieved them in their necessities, which he did in a way that was no less prudent than charitable, considering the dangers of that time; for he did often deposit considerable sums in the hands of a worthy gentleman of the King's party, who knew their necessities well, and was to distribute his charity according to his own discretion, without either letting them know from whence it came, or giving himself any account to whom he had given it."[1]

A.D. 1652. Hale a law reformer under Cromwell.

In spite of this independent conduct, the leading men of the Commonwealth had great confidence in Hale, and they invited him to an undertaking which might have been of inestimable benefit to the community. Since the reign of Edward I. there had hardly been any change in the laws or in the modes of administering justice in England, and they had become quite unsuited to the altered circumstances of the country. Whitelock, and other enlightened lawyers who were members of the Long Parliament, were eager for legal reform, but they were thwarted by ignorant enthusiasts who proposed what was impracticable and absurd; and even Oliver himself, when any objection was made to the abolition of existing processes without the substitution of any others for the protection of property or innocence, complained of a combination of lawyers whom he abused as the "sons of Zeruiah." A very reasonable suggestion was now offered,—that such matters might be much better discussed in private, and that they should be referred to a mixed commission of lawyers and others who were not members of the House of Commons. There were joined with

1 Burnet, p. 12.

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Hugh Peters his associate.

him the fanatical Hugh Peters,[1] and several psalm-singing military officers, who were for destroying our existing system "root and branch," and substituting for it the Mosaic law as expounded in Leviticus. However, Hale was supported by a majority of enlightened jurists, and with their assistance he drew up the heads of all the great legal improvements which have since been introduced, and of some for which public opinion is not even yet quite prepared—such as a general registration of deeds affecting real property. Ordinances for carrying on legal proceedings in the English language, and for abolishing tenure in chivalry, with all its burdensome incidents, were accordingly passed; but these reforms, being interrupted by the sudden dissolution of the Long Parliament, could not be advantageously resumed during the troubles which followed, and upon the Restoration were viewed with dislike, under the notion that they proceeded from Puritans and republicans.[2]

Character of the reforms accomplished.

April 19, 1653.

Hale was not returned to Barebone's parliament, and he must have viewed with alternate grief and mirth the absurd proceedings of its members, till, convinced of their own incapacity, they voluntarily surrendered up their authority.

Dec. 12.

Cromwell was soon after acknowledged as Lord Protector, holding his office for life, with power to name his successor; and the monarchy might be con-

1. Hugh Peters, a fanatic, born at Fowey, Cornwall, and educated at Trinity College, Cambridge, where he graduated M.A. 1622. He afterwards went on the stage, which he quitted and entered into orders; but having had an intrigue with another man's wife, he fled to Rotterdam, and next to America. He returned to England in the rebellion, and became very active against the King, for which he was tried and executed with the regicides 1660.—*Cooper's Biog. Dict.*

2. We have not yet done justice to the moderate and wise men who appeared in England during the Commonwealth. Their prudence contrasts very strikingly with the recklessness which has marked the proceedings of revolutionary leaders in all other countries.

sidered as reëstablished. Hale approved of this arrangement—although he would have been still better pleased with the recall of the ancient line under conditions to secure public freedom.

Dec. 20. Hale becomes a Judge under Cromwell.

At this crisis came an offer of the office of a Judge in the Court of Common Pleas to Hale, who a few months before had been raised to the degree of a Sergeant, the writ for his elevation running in the names of "the Keepers of the Liberties of the People of England." I suspect very much that, for the purpose of conforming as much as possible to Restoration ideas and language, the motives and reasonings on which this very laudable judicial appointment was proposed and accepted have been a good deal misrepresented. On the one hand, it has been said that Cromwell, observing how stoutly Hale defended all state offenders, had no object but to deprive those whom he wished to prosecute of an able advocate; whereas I see no reason to doubt that the Protector proceeded on the principle "*detur digniori*," selecting for his good qualities the most learned, able, and honorable man to be found in the profession of the law. On the other hand, the "scruples" of the Sergeant must have been considerably exaggerated: "Mr. Hale," says Burnet, "saw well enough the snare laid for him; and though he did not much consider the prejudice it would be to himself to exchange the easy and safer profits he had by his practice for a Judge's place, which he was required to accept of, yet he did deliberate more on the lawfulness of taking a commission from usurpers; but having considered well of this, he came to be of opinion *that it being absolutely necessary to have justice and property kept up at all times, it was no sin to take a commission from usurpers if he made no declaration of his acknowledging their authority*—WHICH HE NEVER DID." Now it is quite certain that Hale had previously acknowledged

The motives for the proposal and acceptance of this appointment.

Burnet's account of Hale's "scruples."

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the Commonwealth "WITHOUT KING OR LORDS," and that he did so still more solemnly when he was sworn into office, and when he made the declaration of fidelity on taking his seat as a member of the House of Commons. If all are "usurpers" who hold supreme power without hereditary right, King William III., Queen Anne, and King George I. are to be inscribed in this class, although Hale would not have hesitated to obey them as lawful sovereigns. I believe that he at this time regarded Cromwell in the same light—for we must judge by his principles and his actions, and not by speeches afterwards conveniently put into his mouth. Some pretend that, to overcome the hesitation and reluctance which Cromwell now encountered, he made the famous declaration, "Well! if I cannot rule by red gowns, I will rule by red coats." But the Lord Chief Justice of the King's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, with several of the Puisne Judges, had expressed their willingness, on the King's execution, to continue in their offices; the vacancies of those who resigned had been immediately filled up from among the Sergeants; and there were plenty of candidates for the Bench in Westminster Hall, to drive away all apprehension of the introduction of martial law for lack of ermined Judges.

Hale's duties.

Hale's promotion seems to have taken place in the ordinary fashion, and for several years he regularly performed all the duties of his office, sitting in the Court of Common Pleas in term time—going the circuits twice a year, and, without any misgiving, trying criminals at the assize towns as well as at the Old Bailey in London. Some time afterwards he abstained from trying prisoners—but this was after he had quarrelled with the Government respecting the administration of the criminal law—and both sides were equally

willing that he should confine himself to the decision of civil causes: CHAP. XVI.

A.D. 1654. March. His independent conduct as a Criminal Judge.

"A trial was brought before him at Lincoln, concerning the murder of one of the townsmen who had been of the King's party, and was killed by a soldier of the garrison there; he was in the fields with a fowling-piece on his shoulder, which the soldier seeing, he came to him and said, 'It was contrary to an order the Protector had made, that *none who had been of the King's party should carry arms,*' and so he would have forced it from him; but as the other did not regard the order, so being stronger than the soldier, he threw him down, and having beat him, he left him; the soldier went into the town, and told one of his fellow-soldiers how he had been used, and got him to go with him and lie in wait for the man, that he might be revenged on him: they both watched his coming to town, and one of them went to him to demand his gun, which he refusing, the soldier struck at him, and, as they were struggling, the other came behind and ran his sword into his body, of which he presently died. It was in the time of the assizes, so they were both tried: against the one there was no evidence of forethought felony, so he was only found guilty of manslaughter, and burned in the hand; but the other was found guilty of murder: and though Colonel Whaley, that commanded the garrison, came into the court and urged that the man was killed only for disobeying the Protector's orders, and that the soldier was but doing his duty, yet the Judge regarded both his reasonings and his threatenings very little, and therefore he not only gave sentence against him, but ordered the execution to be so suddenly done, that it might not be possible to get a reprieve, which he believed would have been obtained if there had been time enough granted for it."[1]

I must say that this haste was a very unjustifiable interference with the prerogative of mercy lodged, according to the constitution which he had sworn to respect, in the Lord Protector.

He defies Cromwell for returning a jury.

On another occasion he defied his Highness, not only with spirit, but with perfect propriety. A government prosecution coming on for trial at the assizes,

1. Burnet, pp. 13, 14.

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Hale received information that the jury had not been fairly named. To get at the truth he questioned the sheriff, who said, "I refer all such matters to the under-sheriff." The under-sheriff acknowledged that the jury had been returned by Cromwell. The Judge thereupon cited the statute whereby all juries ought to be returned "by the sheriff or his lawful officer;" and, this not being done, he dismissed the jury, and would not try the cause. When he came back to London the Protector, in a passion, severely censured him, saying "You are not fit to be a Judge." The only answer was, "Sir, what your Highness has said is indeed very true."

A.D. 1655. His disgust at the trial of Anabaptists.

His last disgust as a Criminal Judge was while he was trying some Anabaptists, who had rushed into a church and disturbed a congregation assembled to receive the sacrament, according to the new rubric, after the Genevese fashion. He intended to treat these religionists with severity, though they were much favored by the ruling powers; and he said, "It is intolerable for men who pretend so highly to liberty of conscience to go and disturb others—especially those who have the encouragement of the law on their side." The words were hardly out of his mouth when a *nolle prosequi* was produced, which put a stop to the proceedings before him—upon which he declared that "he would meddle no more with the trials on the Crown side."[1]

April. He abstains from acting as a Criminal Judge, with Cromwell's consent.

Yet, when Penruddock was about to be arraigned before a special commission at Exeter, for high treason in levying war against the Lord Protector,[2] a Government messenger came to Hale's house at Alderley, where he was then enjoying his vacation, and summoned him to attend. He refused to go, exclaiming, "The four terms and two circuits are enough, and the

1. Burnet, 15. 2. 5 St. Tr. 767.

little interval that is between is little enough for my private affairs." Burnet observes that "he thought it was not necessary to speak more clearly; but if he had been urged to it, he would not have been afraid of doing it."[1] We must suppose, therefore, that by a silent understanding, with which both parties were well pleased, for their mutual convenience, Hale henceforth abstained from acting as a Criminal Judge under Cromwell; and that he is free from the absurdity of supposing that he might with a good conscience settle the right to an estate of 20,000*l.* a year,—but that he would be impiously acting under an usurper, if he tried a petty larceny, or the obligation on a parish to repair a highway. His conduct would have been more manly if he had continued fearlessly to perform the whole of his duty as an English Judge.

Hale as a legislator.

We are now to see Hale as a legislator. The Protector, who was the first to establish an incorporating union between all parts of what we now call THE UNITED KINGDOM, summoned representatives from England, Scotland, and Ireland. He was likewise the first to reform the House of Commons, for he disfranchised the rotten boroughs, and directed that representation should be according to the population and wealth of the constituent bodies. Five members were to be returned for Gloucestershire; and the inhabitants, proud of their countryman, Judge Hale, expressed a strong wish that he would allow himself to be put up as a candidate. He declared that he would not solicit votes, and that he would be at no expense, but that if he were returned he would serve. There being no House of Lords for the Common-law Judges to attend, it was considered that there was no objection to their sitting in the House of Commons. Hale attended at the hustings on the day of election,

He is elected a member of the House of Commons in Cromwell's second parliament.

1. Burnet, 15.

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and was at the head of the poll. We are told that "the Earl of Berkeley defrayed the charges of his entertainment, and girt him with his own sword;" but no account has been left us of his speech, or of the chairing.

When the Parliament met, Hale signed the following test, devised to exclude all those who were disposed to inquire into the validity of the INSTRUMENT OF GOVERNMENT:[1]

1. The Instrument of Government is the name given to a paper constitution of forty-two articles, called "the Government of the Commonwealth," by which the Protectorate of Cromwell was established (December, 1653). The executive power was vested in the Protector and a council of fifteen to twenty-one persons appointed for life. Until the meeting of Parliament, fixed for Sept. 3, 1654, the Protector, with assent of the Council, could make ordinances to have the power of laws. After this, the legislative power was vested in the Parliament alone, and, though bills were to be submitted to the Protector for his assent, he had no power to veto them if they were themselves in accordance with the constitution. Parliaments were to be called of necessity every three years, and when called could not be dissolved for five months, except by their own consent. The representative system was reformed, in accordance with the plan proposed by Ireton, and amended by the Rump. Scotland and Ireland were each represented by thirty members, while the number of members for England and Wales was reduced from five hundred to four hundred. The number of county members was largely increased, many rotten boroughs were disfranchised, and important places like Leeds, Manchester, and Halifax received representatives. At the same time, two classes of electors were disfranchised: (1) All Roman Catholics and those concerned in the Irish rebellion were disabled for ever; (2) all persons who had been engaged in war against the Parliament since January, 1642, except such as had given signal testimony since then of their good affection, were disabled from electing or being elected for the next Parliament and the three following. By article xii., it was expressly inserted in the writs that the persons elected should not have power to alter the government as vested by the Instrument in a single person and a Parliament. Accordingly, when Parliament, assembled in September, 1654, wished to debate the constitution, and settle the limits of the Protector's power, Cromwell, while drawing a distinction between "circumstantials," which they might alter, and "fundamentals," which they must leave untouched, forced them to sign an engagement not to propose the alteration of the government in that particular. Mr. Gardiner remarks on the Instrument of Government that it was "the first of hundreds of written constitutions which have since spread over the world, of which the American is the most conspicuous example, in which a barrier is set up against the

"I do hereby freely promise and engage to be true and faithful to the Lord Protector and the Commonwealth of England, Scotland, and Ireland; and shall not propose or give my consent to alter the government as it is settled in one person and a parliament."

He is of use in combating the plans of millenarians and other enthusiasts.

No plans of Chartists, Communists, or Socialists in our day can be more extravagant than those then brought forward with perfect sincerity and intense energy by "men resolved to pull down a standing ministry, the law and property in England, and all the ancient rules of this government, and to set up an indigested enthusiastical scheme, which they called the Kingdom of Christ or of his saints, many of them being really in expectation that one day or another Christ would come down and sit among them; and at least they thought to begin the glorious THOUSAND YEARS mentioned in the Revelation." These Hale, from his biblical learning, and his reputation for piety, combated with much success, seeking to soothe them rather than to treat them with abuse or ridicule. "Among the other extravagant motions made this parliament, one was 'to destroy all the Records in the Tower, and to settle the nation on a new foundation.' So he took this province to himself, to show the madness of this proposition, the injustice of it, and the mischiefs that would follow on it; and did it with such clearness and strength of reason, as not only satisfied all sober persons (for it may be supposed that was soon done), but stopped even the mouths of the frantic people themselves."[1]

Cromwell was now aiming at the crown, with its ancient prerogatives, which he would have allowed to be subjected to new checks; and most of the eminent

entire predominance of any one set of official persons, by attributing strictly limited functions to each."—*Low and Pulling's Dict. of Eng. Hist.*

1. Burnet, 15, 16.

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lawyers who then flourished were of opinion that it would be for the public good that he should be gratified, as he must afterwards rule according to known law. This opinion, it is pretty clear, was entertained by Hale, notwithstanding all that was afterwards published of his horror of "usurpers." He could not at once move that OLIVER I. should be proclaimed King, but he proposed "that the legislative authority should be affirmed to be in the parliament of the people of England, and a single person qualified with such instructions as that assembly should authorize, in the manner suggested by the republicans. To render this palatable to the executive magistrate, he recommended that the military power (which had been so peremptorily refused to Charles I.) should for the present be unequivocally given to the Protector; and that to avoid the perpetuity of parliament, and other exorbitancies in the claims of supremacy, that officer should be allowed such a coördination as might serve for a check in these points."[1]

He supports the authority of Cromwell.

He recommends that the military power be given to the Protector.

The republican spirit was yet much too strong to allow the title of King to be endured in the House of Commons,—much less in the army; and there appeared a disposition rather to strip Cromwell of the power already conferred upon him, than to enlarge it; —so that when this Parliament had sat little more than three months, and before it had passed a single act, it was abruptly dissolved.

Hale confined himself to the discharge of his official duties during the remainder of Oliver's Protectorate. When a new parliament was called in the following year, he declined being returned as a member of the House of Commons,—perhaps from a hint that the House of Lords was likely to be restored, and that the attendance of the Judges would be required

July, 1656. He declines being returned to a new parliament.

1. Godwin, iv. 118, 119.

there. In this way he was excluded from the conferences in which the crown was formally tendered to Cromwell. Had he assisted at them, I make no doubt that he would have joined with Lord Commissioner Whitelock and the other great lawyers, who pressed his Highness to accept the offer, that the constitutional monarchy might be reëstablished under a new dynasty. At this time, profound internal tranquillity prevailed; and the name of England was more respected among foreign nations than it had ever been since the reign of Henry V. Hale was grieved by the ascendency of the sect of the Independents; but he was comforted by the humiliation of the high-Church party; and as a pious man he must have rejoiced to witness the deep sense of religion which prevailed among all ranks, except a few reckless Cavaliers, whose influence seemed for ever extinguished, although they were erelong to be in possession of the whole power of the state, and their manners were to be copied by the great bulk of the nation.

CHAP. XVI. April, 1657. State of the nation at this time.

When Oliver had approached so near the old model of government as to have a House of Lords which was to be hereditary, he did not name any Common-law Judges as members of it, but he caused them all to be summoned as assessors in the usual form; and at the opening of the session the only innovation was, that, instead of placing them on the woolsack in the centre of the House, he ranged them, decked in their scarlet robes, on the right hand of the throne, in the seats which had been formerly occupied by the bishops. Here Hale attended, day by day, sometimes being employed to carry messages to the lower House,—till the Protector, finding this experiment a failure, dissolved Parliament in as great a fury as ever Stuart had done, and resolved henceforth to rule by his prerogative, or rather by his army. Notwithstanding all

December. Hale attends Cromwell's House of Lords as one of the Judges.

Feb. 4, 1658.

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the violence of the major-generals, and the arbitrary sentences of the high courts of justice which assembled to punish political offences, Hale steadily adhered to him till his death, expressing no scruples as to the lawfulness of his authority.

Sept. 3. He declines to act as a Judge under Richard.

But although Richard[1] was peaceably proclaimed, and addresses, pledging life and fortune in his cause, poured in upon him from all quarters, it was evident to every one that he was unequal to the task which had devolved upon him, and that his government could not stand. According to royal fashion, it was supposed that the commissions of the Judges all expired on the death of the Lord Protector, who had granted them. A new commission was offered to Hale, and he was importuned to accept it—but he answered, "I can act no longer under such authority." His scruples were probably strengthened by observing that the army was much discontented, that several military leaders aspired to the Protectorship, and that plots began to be formed for the restoration of the exiled royal family. He even refused to attend Oliver's funeral, or to wear a suit of mourning sent to

1. Richard Cromwell, the eldest surviving son of the Protector Oliver, was born at Huntingdon in 1626. He was admitted into Lincoln's Inn in 1647, but appears to have been an indolent student. In 1649 he married Dorothy Major, with whom he passed several years in rural retirement at Hursley, Hampshire. He had a mild, virtuous, and unambitious character, and inherited little or nothing of his father's mental power. In 1654 Oliver brought him to Court and appointed him First Lord of Trade and Navigation, Privy Councillor, etc. He succeeded his father, September 3, 1658, without open opposition, and was proclaimed Protector by General Monk and the army. A general disaffection, however, was soon apparent, and the republicans and royalists united in hostility to his power. Fleetwood, Lambert, Desborough, and other officers, having formed a cabal against him, demanded the dissolution of Parliament, which was effected in April, 1659. "By the same act," says Hume, "he was considered as effectually dethroned. Soon after, he signed his demission in form." "Thus fell, suddenly and from an enormous height, but, by a rare fortune, without any hurt or injury, the family of the Cromwells." About 1660 he retired to the Continent, and resided some years in Paris and Geneva. He returned to England in 1680, and passed the rest of his life in obscurity and peace. Died in 1712.—*Thomas' Biog. Dict.*

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him, although the like present was accepted by all others who had been in public employment under the late Protector.

Jan. 27, 1659. He serves as member for the University of Oxford in Richard's parliament.

Burnet says that "he lived a private man till the Parliament met that called home the King." But this is not correct; for, although he did not resume his practice at the bar, he was returned to Richard's House of Commons as representative for the University of Oxford, and, having again abjured royal authority, he sat regularly in that assembly till it was dissolved.

April 18.

As he had never been a member of the Long Parliament, and did not belong to the restored Rump, we know nothing of his proceeding during the troublous period which preceded the meeting of the Convention Parliament. Keeping aloof from the Council of State, and taking no part in the cabals of Wallingford House, the probability is that he retired to Alderley, and that he lived quietly there till the elections were about to take place for the Convention Parliament.

A.D. 1660. Contest whether he should serve for the University of Oxford or for the county of Gloucester in the Convention Parliament.

There was then a contest between the University of Oxford and his native county,—which of them should have the honor of returning him to the House of Commons.

Thus wrote the Vice-Chancellor:

"*For the Honorable Justice Hale, at his house at Alderley, in Gloucestershire. These:*

"S^{r},—There hath been and still is a great readiness in this place to choose you for one of their burgesses to sit in the next parliament. But a report (as we suppose, without any just ground) hath been spread abroad here within these few days, that you will not accept of our choice. This hath somewhat discomposed and distracted the minds of some here who are otherwise cordially for you. Wherefore, to settle men's thoughts, and to prevent the inconveniences which may also befall us, 'tis humbly desired that you would be pleased positively to express your willingness, if chosen, to accept thereof.

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Herein you shall (as things are at present with us) greatly promote the interest of this place, and much quiet and oblige many here who honor you; and among them,

"Your most humble servant,

"JOHN CONANT, Vice-Chan.

"Oxford, April 2, 1660."

Hale's answer shows a strong desire to be *seated*, but a considerable apprehension of *falling between two stools:*

His answer to the Vice-Chancellor of Oxford.

"Sir,—I have received your letter; and, first of all, I must continue my acknowledgments of the great respects of the University to me in thinking me worthy of such a trust as is communicated by your letter. Touching my resolution in general for serving in this ensuing parliament, this is all I can say, the expectation of the success of this parliament is great, and as I think and foresee that the businesses that are like to be transacted therein are like to be of great concernment to this nation, and therefore of great difficulty and intricacy; and therefore I may well think any man (as I am) conscious of his own infirmity may desire in his own particular to be excused; yet, inasmuch as there seem to be no engagements to be prefixt to entangle the conscience or to prevent the liberty of those that are chosen to act according to it, I shall not refuse, if I am freely chosen, to serve in it; although I must deal plainly with you, my own particular engagements do much persuade the contrary. But my difficulty at this present rests in this: I have not at all, till this time, heard anything as from the University, touching their resolution; and that is my great strait, that if I shall decline the service of the county in case they fix upon me, I fear I shall be unjust, much disappoint and discontent many; and if I shall decline the choice of the University, I shall seem ungrateful, especially when my last election seems to make me their debtor for ever in the present service; and I know not how to gratify both without a great discourtesy to one in my after relinquishment of either; and the expedient of deferring your choice till the success here were seen, would be too much below that weighty and honorable body of the University, and arrogance in me to expect it, and the choice here falls not before the 18th of this month, which may give too much advantage, it may be, to others' importunities, and leave you too little room after your own choice. The sum is, if I am chosen here, I shall

GILBERT BURNET, BISHOP OF SALISBURY.

look upon myself as equally concerned for the good of the University as if chosen there. If I am chosen there I shall serve, so it may be, without discontent to my native county. If chosen nowhere, I shall yet endeavor in my private station to serve both; consult the honor and service of the University, and follow that which is most conducible and suitable to it; and assure yourself that whether I am chosen there or here or nowhere, I am

CHAP. XVI. His answer to the Vice-Chancellor of Oxford, continued.

"Yours and the University's most faithful

"Friend and servant,

"M. HALE.

"Perchance, if the election be not before Tuesday, I may, by conference with some, learn more of the sense and resolution of the country here, and send you notice of it to Oxford.

"Alderley, April 6, 1660."

He is elected for the county of Gloucester.

Accordingly, he withdrew his pretensions to be member for the University, and, after a contest which lasted four days, he was again returned for his native county,—being, without solicitation or cost, at the head of the poll; although the *third man*, who was thrown out, "had spent near a thousand pounds to procure voices,—a great sum to be employed that way in those days."[1]

He desires the Restoration.

Hale had not entered into any communication with Monk or with Hyde, of whose abilities and measures he had but a poor opinion; and he thought that the Restoration, which he now sincerely desired, was to be the act of the Almighty, rather than to be brought about by human means. Thus he wrote, in a paper still extant, entitled "OBSERVATIONS CONCERNING THE PRESENT PROVIDENCES":

Extract from "Observations concerning the present Providences."

"There hath been a most visible concurrence of Divine Providence and Wisdom which seems visibly distinct from the very instrumentality of the immediate actors: 1. Infatuating those that were, for their natural parts, not inferior to any that have been, with less wisdom, more successful. 2. Advancing

1. Burnet, p. 16.

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the success of the advices of men of no great eminency of judgment. 3. Carrying the advices and activities of men beyond their own design to the producing of that they intended not, as the setting for Monk to counterwork the designs of Lambert and Vane. 4. In permitting a spirit of jealousy and emulation to arise between men whose common interest lay in the same bottom, whereby they were divided and broken. 5. By mingling casual conjectures in such order and method, that they were each subservient one to another, and to the common cause of restoring the King; the particulars were infinite and eminent, and such as could not fall under counsel or contrivance."

Hale's exertions to secure civil and religious liberty in the settlement of the nation.

Yet he remembered the maxim, "Aide toi, le Ciel t'aidera,"[1] and he resolved, with Divine assistance, to exert himself to the utmost, that the coming settlement of the nation should be conducted with a respect both for civil and religious liberty. He was of opinion that a favorable opportunity presented itself for regulating the prerogatives of the Crown, which had been so much abused by the Stuart princes; and he was resolved that the promises made to the Presbyterians by Charles in the Declaration from Breda, and by Hyde in his letters to the leaders of that party, should be carried into full effect under the sanction of an act of parliament. Although, in the fervor of his Presbyterian zeal, he had formerly taken the COVENANT, and engaged to extirpate prelacy, he was now rather inclined to that system of church government in a modified form—but he still denied that it existed *jure divino;* and, thinking that it was left by the Divine Founder of the Church to have under him, as its great heavenly head, either one order of Christian ministers, or several, as according to different circumstances might be most for edification, he was anxious to secure the protection of those who adhered to his earlier views, and still thought that prelacy and popery were equally obnoxious. In accomplishing this object he anticipated

1. "Help yourself, and God will help you."

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no serious difficulty, for Monk, the Earl of Manchester, and almost all those who were taking an active part in recalling the King, were Presbyterians, and, in the midst of the loyal frenzy which now raged through the land, the majority of those elected members of the House of Commons were Presbyterians. He was confirmed in this notion by observing that, when the Convention Parliament met, the Liturgy of the Church of England was not allowed to be used, the Speaker still reading a litany prepared for the occasion, and lay members joining in extempore prayer.[1]

April 25.

The most urgent matter was to consider the conditions on which the King should be recalled. Charles would have been ready to agree to any that might be asked, short of giving up the power of the sword, or the "militia," as it was called,—for which his father had always struggled in his negotiations with the Long Parliament. However, when his letter to the House of Commons was delivered by Sir John Greenville, it excited such a tempest of loyalty that there was a general wish to invite him over without any conditions whatever, and to surrender the rights and liberties of the people into his hands.

May 1. The King's letter to the House of Commons.

To the immortal honor of Hale, he was not carried away by this enthusiastic feeling, and he firmly stood up to perform a duty which he believed he owed to the Crown as well as to the community; for he had the sagacity to foresee that the dynasty would be endangered if the ear of the restored sovereign might be poisoned by the flattery of the high-prerogative lawyers, which had proved the ruin of his father.

Hale's motion in the Convention Parliament that the King should only be restored on conditions.

The Parliamentary History takes no notice of this important debate,—but we have the following sketch of it by Burnet:[2]

1. Commons' Journals; 4 Parl. Deb. 141.

2. Gilbert Burnet, a celebrated prelate, born at Edinburgh Sept. 18, 1643. He received his education at Aberdeen, and in 1663 went over to

CHAP. XVI. Burnet's sketch of the debate on this motion.

"Hale, afterwards the famous Chief Justice, moved that a committee might be appointed to look into the propositions that had been made, and the concessions that had been offered, by the late King during the war, particularly at the Treaty of Newport, that from thence they might digest such propositions as they should think fit to be sent over to the King. This was seconded, but I do not remember by whom. It was foreseen that such a motion might be set on foot: so Monk was instructed how to answer it, whensoever it should be proposed. He told the House that there was yet, beyond all men's hope, an universal quiet all over the nation; but there were many incendiaries still on the watch, trying where they could first raise the flame. He said he had such copious informations sent him of these things, that it was not fit they should be generally known: he could not answer for the peace either of the nation or of the army, if any delay was put to the sending for the King: what need was there of sending propositions to him? Might

Holland, where he studied Hebrew under a learned Jew. On his return he stopped at London, and was chosen a Fellow of the Royal Society. He entered into Episcopal orders in 1665, and was presented to the living of Saltoun; and in 1669 he was appointed professor of divinity at Glasgow. In 1673, however, he settled in London, was made chaplain to the King, preacher at the Rolls, and lecturer of St. Clement's. At this time he engaged in writing the History of the Reformation, the first volume of which came out in 1679, and procured for its author the thanks of Parliament. The second volume was published in 1681; but the third did not appear till 1714. Before this he published three interesting biographical works—the Lives of the Dukes of Hamilton, a Life of Sir Matthew Hale, and another of the Earl of Rochester. After the execution of Lord Russell, whom he attended on the scaffold, Dr. Burnet was brought into some trouble and deprived of his ecclesiastical appointments, whereupon he travelled into France and Italy. Of this tour he afterwards published an account, in letters addressed to Mr. Boyle. He now settled in Holland, where he married a Dutch lady, which furnished an excuse for the States to refuse delivering him up, when demanded by James II. The doctor accompanied the Prince of Orange to England, and in 1689 was consecrated Bishop of Salisbury; but having, in a pastoral letter to his clergy, asserted the right of William and Mary to the throne, on the plea of conquest, he gave such offence that his discourse was ordered by the Parliament to be burnt by the hangman. On the death of his second wife he married Mrs. Berkeley, a widow lady of fortune. Among other important trusts committed to the bishop was that of the education of the young Duke of Gloucester, son of Princess Anne of Denmark. In 1699 our author's "Exposition of the Thirty-nine Articles" was published, and incurred the censure of the Lower House of Convocation. He died March 17, 1714–15, and was buried in the Church of St. James, Clerkenwell.—*Cooper's Biog. Dict.*

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they not as well prepare them, and offer them to him when he should come over? He was to bring neither army nor treasure with him, either to fright or to corrupt them. So he moved that they would immediately send commissioners to bring over the King; and said that he must lay the blame of all the blood or mischief that might follow, on the heads of those who should still insist on any motion that might delay the present settlement of the nation. This was echoed with such a shout over the House, that the motion was no more insisted on. To the King's coming in without conditions, may be well imputed all the errors of his reign."[1]

The motion lost.

Hale does not seem to have been afraid of giving offence to the Court by this effort. Conscious of his high qualifications as a Judge, and reflecting on the loyal part he had acted since the death of Oliver, he anticipated that some considerable offer would be made to him. Yet he had not at all set his heart on preferment, and he would have been well pleased to pass the remainder of his days in a private station. Thus he modestly communed with himself, while the King was journeying from Breda:

May 13. Hale's "Meditation" on his prospect of preferment.

"Though we are but inconsiderable flies that sit upon the chariot-wheel, we attribute all the dust that is made to *our* weight and contribution; and thereupon fancy up ourselves into an opinion of our merit, and of a most indisputable attendance of great honor and place and fame attending it; when, it may be, there is no such desert as is supposed; or if there be, yet not such observation of it by others; or if there be, yet the many rivals that attend such a change may disappoint me of it; or if it do not, yet the preferment that befalls me is not such as I expected; or if it be, yet it may be I am not suitable and fit for it; or if I am, yet I little consider the trouble and dangers and difficulty that attend it. Possibly it will make me obnoxious to much censure, as if all my former endeavors were basely ordered to my own ends and advantage; or, it may be, it may subject me to the envy and emulation of others, which may in time undermine me; or if there be no such occasion of danger from that ground, yet the state of public affairs has various faces

1. Own Times, i. 122.

CHAP. XVI. His "Meditation," continued.

and occasions that may make it necessary to gratify other persons or factions or interests with my removal; or, if it do not, yet the engagement to a place of honor and profit, and the fear of the shame or loss of parting with it, may enslave me to those drudgeries, or, at least, engage me in them that now I look upon as unworthy; or if it do not, yet the very many great difficulties that attend places of honor or profit upon a change, may make my walk in them full of brakes and stones that will perplex and scratch me, if not wholly bemire and entangle me: or if none of all these things befall me, yet great places may rob me of serenity of mind, or withdraw my heart from God by the splendor of the world and multiplicity of secular concernments; or, at least, they most certainly will rob me of my quiet rest, liberty, and the freedom of my opportunities to serve God with entireness and uninterruptedness."[1]

A contrast by Hale between the Roundheads and Cavaliers.

1. The original manuscript of which this is an extract is very long and tedious. However, he gives in it the following lively contrast between the Roundheads and Cavaliers: "There was in many of the suppressed party much hypocrisy and dissimulation, much violence and oppression: but there was in them sobriety in their conversation, pretence and profession of strictness of life, prayers in their families, observation of the Sabbath. These were commendable in their use, though it may be they were in order to honor and to disguise bad ends and actions. And I pray God it fall not out with us upon our change that the detestation of their persons and foul actions may transport us to a *contrary* practice of that which was in *itself* commendable, lest we grow loose in religion and good duties, and in the observation of the Sabbath; and lest we despise strictness of life because abused by *them* to base and hypocritical ends." This is a wonderful anticipation of the flood of profaneness and immorality which speedily overran the land. It is rather amusing to find Hale already so decidedly considering himself to belong to the royalists, forgetting how lately he had taken the "Covenant," and the "engagement to the Commonwealth." He continued, by the true Church-and-King men, to be considered all his life little better than a "fanatic and a republican."—See Roger North's writings, wherever Hale's name is mentioned.

CHAPTER XVII.

CONTINUATION OF THE LIFE OF SIR MATTHEW HALE TILL HE RESIGNED THE OFFICE OF CHIEF JUSTICE OF THE KING'S BENCH.

CHAP. XVII. A.D. 1660.

Hale is presented to Charles II.

On the memorable 29th of May, Hale, accompanying Sir Harbottle Grimston,[1] the Speaker, to the Banqueting-house at Whitehall, did obeisance to Charles II., seated on the throne; and had a gracious reception, notwithstanding his motion about "conditions." Three days after, he was again called to the degree of Sergeant-at-law, under a royal writ, his former *coifing* by Cromwell being deemed invalid.[2] But, although always respectful to the sovereign, he never displayed the slightest anxiety about Court favor, and he continued to do his duty in the House of Commons firmly and consistently.

His opinion upon the Thirty-nine Articles.

When the question was debated "whether the Presbyterian Church government, or the Church of England formerly established, should reign?" he expressed respect for the Thirty-nine Articles, but thought they ought not to be put on a footing with

1. Sir Harbottle Grimston was born at Bradfield Hall, near Manningtree, Essex, about 1594. He studied in Lincoln's Inn, and in 1638 became Recorder of Colchester, for which place he was also returned to Parliament in 1640. He acted for some time in opposition to the King, but at length became more moderate; and when that monarch was executed he went abroad. In 1660 he was chosen Speaker of what was called "The Healing Parliament," and he was also one of the commissioners who waited on Charles II. at Breda. On the restoration of that king he was made Master of the Rolls, which office he discharged with great reputation, and died December 31, 1683. He published the Reports of Sir George Croke, whose daughter he married.—*Cooper's Biog. Dict.*

2. Dugd. Or. Jur. 115.

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the Old and New Testament, and resisted the proposal that subscription to them should be a necessary qualification for holding office in Church or State.[1]

Being specially appointed by the House to prepare and bring in the Indemnity Bill for political offences during the troubles, he was desirous of confining the exceptions to those who had sat in judgment on the King. In his Diary he had written—

Extract from his Diary.

"The wise man tells us, 'a man may be *overjust.*' As equity may mitigate the security of justice in particular cases, so may and must prudence some public and universal concernments; otherwise, it may become an act of frenzy, not of justice. I speak not of that unexampled villany against the King's life; wherein, nevertheless, though the punishment must be exemplary, perchance the present necessity may restrain the universality of the punishment, proportionable to the crime in reference to particulars."

Accordingly he exerted himself to save Vane and Lambert,[2] who, in fact, had done little more than himself by acting under the authority of the Commonwealth; and although he was ultimately defeated in this laudable attempt, these two individuals having rendered themselves so very obnoxious to the royalists, he carried the Bill of Indemnity notwithstanding

His Bill of Indemnity carried.

1. 4 Parl. Hist. 79. This seems to have been a very tumultuous debate. "The Committee sat an hour in the dark before candles were suffered to be brought in, and then they were twice blown out; but the third time they were preserved, though with great disorder."

2. John Lambert, born about 1620, was a favorite of the Independents. He entered the army of the Parliament, fought as colonel at Marston Moor in 1644, and at the end of the first civil war had obtained the rank of general. He was second in command under Cromwell in Scotland in 1649, and led the van at Dunbar in 1651. In 1653 he made the proposition that the title of Protector should be given to Cromwell. "Lambert, his creature," says Hume, "who, under an appearance of obsequiousness to him, indulged an unbounded ambition, proposed to temper the liberty of a commonwealth by the authority of a single person." After the death of Oliver he plotted against Richard Cromwell in 1659, and commanded the army in opposition to the Parliament until the triumph of the royalists under Monk. In 1662 he was condemned to death; but this penalty was commuted to banishment in Guernsey, where he survived thirty years.—*Thomas' Biog. Dict.*

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the factious opposition of a considerable number of overzealous members, who wished, out of revenge, to "smite the fanatics hip and thigh."[1]

Sept. 12. On the motion for an address to the King, praying that he would marry a Protestant, Hale said "it was not reasonable to confine his Majesty,—urging how much the peace and good of the nation was bound up in him."[2]

He sits as a commissioner on the trial of the regicides.

Parliament was adjourned to November to make way for the trial of the regicides before a special commission at the Old Bailey; and this last speech gave such satisfaction, that Hale was named one of the commissioners.[3] He attended regularly, and concurred in the sentences, without becoming the subject of obloquy as Shaftesbury[4] and Monk did, who sat by his side, and were eager for a conviction, although each of them had actually served in the parliamentary army and had levied open war against the late King. Had Hale sat on the trial of Vane, he would have been liable to severe censure—but he never was called judicially to decide the question on which his own

1. 4 Parl. Hist. 80, 101, 102, 119.

2. 4 Parl. Hist. 119. It is remarkable that wherever he is mentioned in this Parliament he is called "Sergeant Hales." In his own time an *s* was very often added to his name.

3. 5 St. Tr. 986.

4. Anthony Ashley Cooper, Earl of Shaftesbury, was born at Winborne, Dorsetshire, July 22, 1621, and educated at Exeter College, Oxford, whence he removed to Lincoln's Inn, where he studied the law. At the beginning of the civil war he inclined to royalty, but quitted it for the other party, though when Cromwell assumed the government he opposed him zealously; and he afterwards assisted in the Restoration, for which he was created Lord Ashley, and appointed Chancellor of the Exchequer and one of the commissioners of the Treasury. In 1672 he was created Earl of Shaftesbury and made Lord Chancellor, which office he resigned the year following. He opposed the Test Bill; and when the Parliament was prorogued on that account the Earl contended that it was dissolved, for which he was sent to the Tower. On the change of ministry in 1679 he was made President of the Council, but resigned the place shortly afterwards. In 1681 he was tried for high treason, but acquitted. On this he went to Holland, where he died Jan. 22, 1683.—*Cooper's Biog. Dict.*

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legal guilt or innocence depended, viz., "whether a person who obeys a republican government, during the exile of the lawful sovereign, is thereby guilty of high treason?"[1]

It was now generally expected that he would be appointed to some high permanent judicial post. He himself—speculating upon the subject, and persuading himself that he wished to avoid promotion, but pretty plainly showing, I think, that he would have been mortified if the offer had not been made to him—wrote in his PRIVATE MEDITATIONS:

Supposed reasons against his taking the office of a Judge in Westminster Hall.

"*Reasons why I desire to be spared from any place of public employment.*

"I. Because the smallness of my estate, the greatness of my charge, and some debts, make me unable to bear it with that decency which becomes it, unless I should ruin myself and family. My estate not above 500*l.* per annum, six children unprovided for, and a debt of 1,000*l.* lying upon me. And besides this, of all things it is most unseemly for a judge to be necessitous. Private condition makes that easier to be borne and less to be observed, which a public employment makes poor and ridiculous. And besides this, it will necessarily lift up the minds of my children above their fortunes, which will be my grief and their ruin.

"II. I am not able so well to endure travel and pains as formerly. My present constitution of body requires now some ease and relaxation.

"III. I have formerly served in public employment under a new, odious interest, which by them that understand not, or observe not, or will willingly, upon their own passions and interest, mistake my reasons for it, may be objected even in my very practice of judicature, which is fit to be preserved without the least blemish or disrepute in the person that exerciseth it.

"IV. The present conjuncture and unsettlement of affairs, especially relating to administration of justice, is such; the various interests, animosities, and questions, so many; the present rule so uncertain, and the difficulties so great, that a man

1. This trial came on in the Court of King's Bench, 2d June, 1662, when Hale was Chief Baron of the Exchequer. 6 St. Tr. 119.

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Supposed reasons against his taking a Judgeship, continued.

cannot, without loss of himself or reputation, or great disobligations, exercise the employment of a judge, whose carriage will be strictly observed, easily misrepresented, and severely censured according to variety of interests. And I have still observed, that almost in all times, especially upon changes, judges have been ever exposed to the calumny and petulancy of every discontented or busy spirit.

"V. I have two infirmities that make me unfit for that employment: 1st. An aversation to the pomp and grandeur necessarily incident to that employment. 2d. Too much pity, clemency, and tenderness in cases of life.

"VI. [The MS. is here torn and illegible.]

"VII. I shall lose the weight of my integrity and honesty by accepting a place of honor or profit, as if all my former counsels and appearances were but a design to raise myself.

"VIII. The very engagement in a public employment carries a prejudice to whatsoever shall be said or done to the advantage of that party that raised a man, as if it were the service due to his promotion; and so, though the thing be never so just, it shall carry no weight but a suspicion of design or partiality.

"IX. I am sure, in the condition of a private man declining preferment, my weight will be three to one over what it will be in a place of judicature.

"X. I am able in my present station to serve my King and country, my friend, myself, and family, by my advice and counsel.

"XI. I have of late declined the study of the law, and principally applied myself to other studies, now more easy, grateful, and seasonable to me.[1]

"XII. I have had the perusal of most of the considerable titles and questions of law that are now on foot in England, or that are likely to grow into controversy within a short time; and it is not fit for me, that am pre-engaged in opinion, to have these cases fall under my judgment as a judge.[2]

"If it be objected that it will look as a sign of the displeas-

1. It was barely two years since he had ceased to be a Judge.

2. This scruple I do not at all understand, for he had not returned to private practice since the death of Oliver, and it was above seven years since he left the bar. In the early part of his career he had practised very extensively as a conveyancer, particularly in framing settlements for noble families.—*Roger North's Life of Lord Keeper Guilford*, i. 132.

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Supposed reasons against his taking a Judgeship, continued.

ure of the King against me, or of a disserviceable mind in me towards the King, if I should either be passed over or decline a preferment in this kind, I answer that neither can reasonably be supposed,—

"1. In respect of my present condition as serving in the House of Commons, which excuseth the supposition of either.

"2. His Majesty's good opinion of my fidelity may be easily manifested, and my fidelity and service to him will be sufficiently testified by my carriage and professions.

"But if, after all this, there must be a necessity of undertaking an employment, I desire,—

"1. It may be in such a court and way as may be most suitable to my course of studies and education.

"2. That it may be the lowest place that may be, that I may avoid envy. One of his Majesty's counsel in ordinary, or, at most, the place of a Puisne Judge in the Common Pleas, would suit me best."

It is doubtful whether, notwithstanding his great judicial reputation, he might not have been allowed to remain a member of the House of Commons, if it had not just then turned out to be exceedingly convenient to the Government to remove him from that assembly.

Lord Clarendon,[1] after all his fair promises to the

1. Edward Hyde, Earl of Clarendon, was born at Dinton, Wiltshire, Feb. 16, 1608. He was educated at Magdalen Hall, Oxford, and afterwards called to the bar. In the Parliament which assembled at Westminster April 10, 1640, he was returned for Wotton Basset; and in that which followed the same year, commonly called the Long Parliament, he sat for Saltash, when he distinguished himself by carrying up the impeachment against some of the Judges. But though he acted zealously in the redress of grievances, he was no less strenuous for upholding the dignity of the Crown and the rights of the Church. He also opposed the bill of attainder against Strafford; and when the Parliament proceeded to call out the militia he left the House altogether, for which he was excepted from pardon. He then joined the King at York, and was nominated Chancellor of the Exchequer, sworn of the Privy Council, and knighted. In this capacity he took his place in the Parliament that assembled at Oxford; and in 1644 he was one of the King's commissioners at Uxbridge. On the decline of the royal cause he went to Jersey, where he began to write the "History of the Rebellion," at the command of the King, who sent him a large collection of papers for the purpose. In May, 1648, he was called to

EDWARD HYDE, EARL OF CLARENDON.

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Occasion of his being made Chief Baron of the Exchequer.

Presbyterians, had resolved that the Church of England should be restored to the ascendency it had enjoyed under Archbishop Laud; but, as yet, the bishops were excluded from sitting in the House of Lords, by the act to which Charles I. had duly given his assent before the commencement of the civil war; and it was essentially necessary to humor the Presbyterians, who could still command a majority in the Lower House. For this reason, Baxter,[1] Calamy, and other divines of that persuasion, had been appointed King's chaplains, and Charles had declared in favor of a mitigated

Paris, where he continued to serve Charles II., by whom he was sent to Spain in the following year, to solicit assistance from that Court, but returned without success in 1651. He now went to live at Antwerp, and in 1657 was made Chancellor of England, being continued in that office at the Restoration. He was also chosen Chancellor of Oxford, and advanced to the peerage by the title of Baron Hyde. In 1661 he was created Earl of Clarendon; but the marriage of his daughter with the Duke of York, and his own inflexible virtue, now operated against him both in Court and Parliament. In 1663 a charge of high treason was exhibited against him in the Lords, by the Earl of Bristol, but it ended to the Chancellor's honor. It did not, however, put a stop to the machinations of his enemies; and the splendid house which he built, and the grant of the park which bears his name, gave new scope for malice. He was now accused of having sold Dunkirk to the French, and in 1667 the seals were taken from him. This was the prelude to an impeachment. To avoid the consequences he retired to France, and an act of perpetual banishment was afterwards passed against him. The year following a villanous attempt was made upon his life at Evreux, by some English seamen, and it was with difficulty that he escaped from their outrage. He then went to Montpellier, next to Moulins, and lastly to Rouen, where he died Dec. 9, 1674. His body was brought to England and interred in Westminster Abbey.—*Cooper's Biog. Dict.*

1. Richard Baxter (*b.* 1615, *d.* 1691), a celebrated divine and preacher. He was ordained in 1638, and in 1640 obtained a living at Kidderminster, where he soon obtained a reputation for his oratory. During the civil war he was with the army of the Parliament preaching to the soldiers, though he refused to support Cromwell in his assumption of the Protectorship. On the Restoration he was appointed one of the royal chaplains, and offered the see of Hereford, which he declined. In 1662 he refused to subscribe to the Act of Uniformity, and suffered much persecution in consequence, being sent to prison in 1685 by Judge Jeffreys. Of his many writings, the *Call to the Unconverted* and *The Saint's Everlasting Rest* obtained a remarkable popularity.—*Cassell's Biog. Dict.*

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episcopacy,[1]—all tests being removed which could not be taken by the more rigid Presbyterians, and a comprehensive church establishment being arranged which would equally include Presbyterians and Episcopalians. To consummate this happy union, it was proposed that a Synod should be called, composed equally of the two denominations of Christians. The Presbyterians thought they discovered that the Chancellor, intending to practise a pious fraud upon them, merely wished to amuse them till the Convention Parliament should be dissolved; expecting that, from the growing dislike to whatever savored of Puritanism, after a general election they would be at his mercy. They therefore insisted that their rights should be secured by a bill to be passed by the present parliament, and they carried a motion in the House of Commons that "Sergeant Hale (in whom they placed entire confidence) should prepare and bring in the same." Accordingly, acting with his usual good faith, he laid on the table of the House a bill which embodied the Articles on this subject contained in the Declaration from Breda. Had he remained a member of the House, there can be little doubt that by his exertions it would have passed the House of Commons,—so that it must have been defeated by a vote of the House of Lords, or by the veto of the Crown. In either of these cases, not only would there have been a clamor about broken faith, but the public tranquillity would have been endangered, and the King might again have "gone upon his travels."

Proposed union of Presbyterians and Episcopalians.

The Presbyterians insist on Hale preparing a bill to secure their rights.

Their object frustrated by Hale's appointment to the Exchequer.

Fortunately, at this time the office of Chief Baron of the Court of Exchequer was vacant, by the promo-

1. This was pretty much Archbishop Usher's plan, according to which, although not exactly "Princeps inter Pares," the bishop was not to act without the advice of his presbyters; he was to preach every Sunday; and, eschewing secular ambition, he was to devote himself to his spiritual duties.—4 *Parl. Hist.* 152.

RICHARD BAXTER.

After a Portrait by J. Riley.

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tion of Sir Orlando Bridgman[1] to be Chief Justice of the Court of Common Pleas. Clarendon proposed, and the King readily consented, that the author of the "Comprehension Bill" should be the new Chief Baron; for the old doctrine was now clearly recognized and acted upon, that the Common-law Judges, who acted as assessors to the House of Lords, were disqualified to sit in the House of Commons.

Nov. 7. Compliment to him by Clarendon when he was sworn in.

After a little decent resistance, Hale accepted the honor thrust upon him. At his inauguration, of course not a word was said about the "Comprehension Bill;" but the Chancellor expressed his respect for the author of it in a very singular manner, telling him, among other things, "That if the King could have found out an honester and fitter man for the employment of presiding in the Court of Exchequer, he would not have advanced him to it; and that he had, therefore, preferred him because he knew none that deserved it so well."[2]

Nov. 27.

This manœuvre succeeded. The second reading of the "Comprehension Bill" came on a few days after, when, in Hale's absence, it was furiously pulled to pieces by Morrice, the Secretary of State, a creature of Clarendon, and was rejected by a majority of 183 to 157.[3] A dissolution soon after took place, and in the next parliament Clarendon was able, without

1. Sir Orlando Bridgeman, son of the Bishop of Chester, received his education at Cambridge. He took his B.A. degree as a member of Queen's College, but migrated to Magdalen before taking his degree of M.A. Afterwards he went to the bar, but made no figure till the Restoration, when he was advanced to the post of Chief Baron of the Exchequer, in which capacity he presided at the trials of the regicides. He was next made Chief Justice of the Common Pleas, and in 1667 succeeded Lord Clarendon, with the title only of Keeper of the Great Seal. In 1672 he was deprived of his office, and spent the remainder of his life in obscurity. As a legal writer he is known by "Conveyances; being select precedents of deeds and instruments concerning the most considerable estates in England." Died June 25, 1674.—*Cooper's Biog. Dict.*

2. Burnet, 17; Kennet Reg. 280; Oldmixon, 488; Neal, ii. 78, 80.

3. 4 Parl. Hist. 154.

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difficulty, not only to restore the bishops to the House of Lords, but to eject 2,000 Presbyterian ministers from livings in the Church of which they were in possession, and to pass the "Act against Occasional Conformity" and the "Five-mile Act,"[1] by which the Presbyterians were entirely expelled from the House of Commons, and were subjected to the most grievous persecution.

"Five-mile Act."

Hale's reluctance to be knighted.

Hale, on his promotion, incurred some ridicule by attaching importance to the harmless ceremony of being knighted, instead of quietly submitting to it. From an excess of humility, he desired to avoid what was then considered a distinction, "and therefore, for a considerable time, declined all opportunities of waiting on the King,—which the Lord Chancellor observing, sent for him upon business one day when the King was at his house, and told his Majesty 'there was his modest Chief Baron,'—upon which he was unexpectedly knighted."[2] It must have been a rich treat for the merry monarch to dub the semi-puritanical sage, saying, "RISE, SIR MATTHEW."

Admirable rules laid down by him for his conduct as a Judge.

A smile at such little infirmities does not prevent us from viewing with admiration and reverence the rules which he now laid down for his conduct as a Judge. They ought to be inscribed in letters of gold on the walls of Westminster Hall, as a lesson to those intrusted with the administration of Justice.

1. The Five mile Act (1665) enacted that no Nonconforming clergyman should come within five miles of any corporate town or any place where he had once ministered (except when travelling), nor act as a tutor or schoolmaster unless he first took the oath of non-resistance and swore to attempt no alteration of the constitution in Church or State. It was one of the series of repressive measures popularly known as the "Clarendon Code," and was aimed at depriving the ejected clergy of their means of livelihood, both by preaching and teaching. The Clarendon Code is the name given to the four acts passed during Lord Clarendon's administration, directed against Nonconformists—viz., the Act of Uniformity, the Corporation Act, the Conventicle Act, and the Five-mile Act.—*Low and Pulling's Dict. of Eng. Hist.*

2. Burnet, 17.

ANTHONY ASHLEY COOPER, EARL OF SHAFTESBURY.

After Sir Peter Lely.

CHAP. XVII. Rules laid down for his conduct as a Judge, continued.

"*Things necessary to be continually had in remembrance.*

"1. That in the administration of justice I am intrusted for God, the King, and country; and therefore,

"2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.

"3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.

"4. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

"5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.[1]

"6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

"7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

"8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.

"9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

"10. That I be not biassed with compassion to the poor, or favor to the rich, in point of justice.

"11. That popular or court applause or distaste have no influence in any thing I do, in point of distribution of justice.

"12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

"13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

"14. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.

"15. In criminals of blood, if the fact be evident, severity is justice.

"16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

"17. To charge my servants, 1. Not to interpose in any matter whatsoever; 2. Not to take more than their known fees; 3. Not to give any undue precedence to causes; 4. Not to recommend counsel.

1. "And, while on the bench, not writing letters or reading newspapers."

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"18. To be short and sparing at meals, that I may be the fitter for business."[1]

His strict and uniform observance of these rules.

I have known laudable resolutions formed by new judges very speedily forgotten; and it is a curious fact in the annals of our profession, that those men who, when at the bar, complained most bitterly of judicial impatience and loquacity, becoming judges themselves, have been most noted for being impatient and loquacious. But Hale strictly and uniformly observed all the rules he laid down for himself, and might be considered the perfect model of a great magistrate.

He is made Chief Justice of the King's Bench. A.D. 1671.

He continued Lord Chief Baron of the Exchequer for eleven years, and he is certainly to be considered the most eminent Judge who ever filled this office. Being then promoted to be Chief Justice of England, he gave new dignity to the supreme magistracy, which had been illustrated by Gascoigne, by Fortescue, and by Coke.

That we may take a view of the whole of his judicial career, it may be convenient here to mention that in the year 1671, on the death of Lord Chief Justice Kelynge, although the wicked CABAL[2] was then in full sway,—as his place could not conveniently be sold, or given to a profligate courtier, Lord Keeper Bridgman was allowed to have the disposal of it, and he recommended the man whom the whole nation would

1. From the original in Hale's own handwriting. I could only wish that, further, he had given a caution against interrupting counsel, and against loquacity on the bench, with a repetition of Lord Bacon's maxim, "A much-speaking judge is a no well-tuned cymbal."

2. The Cabal (1667–1673) was the name given to the ministry formed in the reign of Charles II. after the fall of Clarendon. The word "Cabal" had been used previously to denote a secret committee or cabinet, and answers to the "Junto" of a somewhat later date. It happened, however, rather curiously, that the initials of the statesmen who formed this administration spelt the word "Cabal." These ministers were Clifford, Arlington, Buckingham, Ashley-Cooper (Lord Shaftesbury), and Lauderdale.—*Low and Pulling's Dict. of Eng. Hist.*

have preferred. "All people applauded this choice, and thought their liberties could not be better deposited than in the hands of one that as he understood them well, so he had all the justice and courage that so sacred a trust required."[1]

His qualifications as a Judge. A.D. 1660—1676.

There was no disappointment; and while Hale sat in the Court of Common Pleas, in the Court of Exchequer, or in the Court of King's Bench, his qualifications as a Judge always shone with lustre in proportion as the occasion called forth their display. He was equally familiar with every branch of English jurisprudence,—the criminal code and the civil code,—the law of real property and the law of personal property,—antiquarian lore and modern practice. He likewise had the advantage, so rare in England, of having studied the Institutes, Pandects, and Code of Justinian,[2] with the best commentaries on those immortal compilations. While free from every other passion, he was constantly actuated by a passion to do justice to all suitors who came before him. He was not only above the suspicion of corruption or undue influence, but he was never led astray by ill temper, impatience, haste, or a desire to excite admiration. Instead of submitting to the dictation of the leader of the bar,—

His passion to do justice to all suitors.

"One thing was much observed and commended in him, that when there was a great inequality in the ability and learning of the counsellors that were to plead one against another, he

1. Burnet, p. 9.

2. The greatest work of the reign of Justinian was the revision of the Roman law and the publication of the Codes, Pandects, and Institutions which bear his name, and which were compiled under his supervision by the eminent jurist Tribonian. The "Codes," consisting of twelve books, were completed in 534. The "Digesta" or "Pandectæ," embracing all that was taken from the decisions, arguments, and expositions of the civilians of Rome, were subsequently issued in fifty books. The "Institutiones" were an abridgment of the first principles of the law for the use of students.—*Thomas' Biog. Dict.*

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thought it became him as the Judge to supply that; so he would enforce what the weaker counsel managed but indifferently, and not suffer the more learned to carry the business by the advantage they had over the others in their quickness and skill in law, and readiness in pleading, till all things were cleared in which the merits and strength of the ill-defended cause lay. He was not satisfied barely to give his judgment in causes; but did, especially in intricate ones, give such an account of the reasons that prevailed with him, that the counsel did not only acquiesce in his authority, but were so convinced by his reasons, that many professed that he brought them often to change their opinions; so that his giving of judgment was really a learned lecture upon that point of law. And, which was yet more, the parties themselves, though interest does too often corrupt the judgment, were generally satisfied with the justice of his decisions, even when they were made against them. His impartial justice and great diligence drew the chief practice after him into whatsoever court he came; so as he had drawn the business much after him into the Common Pleas and the Exchequer, it now followed him into the King's Bench, and many causes that were depending in the Exchequer and not determined were let fall there, and brought again before him in the court to which he was now removed."[1]

His deference to his brethren on the bench.

Notwithstanding his great superiority to his brethren on the bench, he never attempted to dictate to them; and, on the contrary, he went into the extreme of not sufficiently guiding them to a just conclusion:

"He would never suffer his opinion in any case to be known till he was obliged to declare it judicially, and he concealed his opinion in great cases so carefully that the rest of the judges in the same court could never perceive it. His reason was, because every judge ought to give sentence according to his own persuasion and conscience, and not to be swayed by any respect or deference to another man's opinion; and by this means it happened sometimes that when all the Barons of the Exchequer had delivered their opinions, and agreed in their reasons and arguments, yet he, coming to speak last, and differing in judgment from them, expressed himself with so much weight and

1. Burnet, pp. 29, 30.

solidity, that the Barons have immediately retracted their votes and concurred with him." [1]

His great care in deciding causes.

"The only complaint that was ever made of him was *that he did not despatch matters quick enough;* but the great care he used to put suits to a final end, as it made him slower in deciding them, so it had this good effect, that causes tried before him were seldom if ever tried again." [2]

"He did not affect the reputation of quickness and despatch by a hasty and captious hearing of the counsel. He would bear with the meanest, and gave every man his full scope, thinking it much better to lose time than patience. In summing up evidence to a jury, he would always require the bar to interrupt him if he did mistake, and to put him in mind of it if he did forget the least circumstance: some judges have been disturbed at this as a rudeness, which he always looked upon as a service and respect done to him." [3]

But he remembered that it is the duty of a judge to render it disagreeable to an advocate to utter nonsense, or what is wholly irrelevant,—

He cuts short irrelevancy in advocates.

"He therefore held those who pleaded before him to the main hinge of the business, and cut them short when they made excursions about circumstances of no moment,—by which he saved much time, and made the chief difficulties be well stated and cleared." [4]

As he had no favorites among counsel, he studied to be free from antipathies; but, from his love of morality and fair practice, he was supposed to bear rather hard on the licentious and crafty, though good-humored, Saunders, afterwards his successor as Chief Justice of the King's Bench; [5] and he caused heavy complaints by refusing to discharge the infamous Sergeant Scroggs when arrested for debt at the gate

1. Burnet, p. 54. It would surely have been better if all their Lordships had had a *caucus*.

2. Burnet, p. 18.

3. Burnet, p. 56. I have heard of judges who were rather faulty in this respect, and, for being set right, would revenge themselves by an observation upon the effect of the evidence unfavorable to the counsel who had the temerity to interpose.

4. Burnet, p. 40. 5. Roger North's Life of Lord Guilford, ii. 127.

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of Westminster Hall,[1] although Sir George Jeffreys, by flattery and the affectation of religion, is said to have gained some authority over him.[2]

He is a great Equity Judge.

He was not merely by far the best Common-law Judge, but by far the best Equity Judge of his time. Never having been Chancellor or Master of the Rolls, he was the first English lawyer who took a just view of this branch of our jurisprudence, controverting the common notion that it was regulated by no more certain rule than a capricious idea of what was fit in each particular case.

"He did look upon Equity as part of the Common Law, and one of the grounds of it; and therefore, as near as he could, he did always reduce it to certain rules and principles, that men might study it as a science, and not think the administration of it had any thing arbitrary in it."[3] He therefore not only disposed admirably of the business on the Equity side of the Court of Exchequer, but he was frequently called into the Court of Chancery as assessor by Lord Chancellor Clarendon and Lord Keeper Bridgman. Even Lord Shaftesbury, when he fantastically grasped the Great Seal, was soon obliged to rely upon the aid of Sir Matthew Hale, although at first he presumptuously trusted to his own cleverness, setting all established doctrines at defiance. Lord Nottingham,[4] the father of Equity, worshipped Hale as his great master.

A.D. 1666. His merit in settling disputes after the Fire of London.

Sir Matthew likewise gained immense credit, after the Fire of London, by sitting many months in Clifford's Inn, and, with the assistance of some other judges, deciding all questions that arose about title and boundary, and the obligation to rebuild. The restoration of the city, reckoned one of the wonders

1. Woolrych's Life of Jeffreys, p. 52.
2. North's Life of Lord Guilford, i. 118.
3. Burnet, p. 55.
4. See Lives of the Lord Chancellors.

of the age, was mainly ascribed to his care, "since there might otherwise have followed such an endless train of vexatious suits, as might have been little less chargeable than the fire itself had been."[1] His readiness in arithmetic, and his skill in architecture, are said to have then been of signal use to him. For his services on this occasion, the portrait of him was placed in Guildhall, where we now behold it—and he received from the Lord Mayor, as his only further recompense, a silver snuff-box, which is still in the possession of his family.

Anecdotes of Hale's judicial purity.

Although the offer of *epices* by suitors to the judge was not then recognized, the custom of *soliciting* him to do justice was not quite obsolete. A noble Duke once called on Lord Chief Baron Hale, under pretence of giving him information which would better enable him to understand a cause shortly to be tried before him. The Lord Chief Baron, interrupting him, said "Your Grace does not deal fairly to come to my chamber about such an affair, for I never receive any information of causes but in open court, where both parties are to be heard alike." The Duke withdrew, and was silly enough to go straightway to the King, and to complain of this as a rudeness not to be endured. His Majesty answered, "Your Grace may well content yourself that it is no worse; and I verily believe he would have used myself no better, if I had gone to solicit him in any of my own causes."[2]

However, it must be confessed that Hale carried his hatred of bribery and corruption to a coxcombical length, which exposed him to ridicule. When he

1. Burnet, p. 18. Of his architectural taste we may judge from his advising the Duke of Beaufort, when building the magnificent chateau at Badmington, to have only one door to it, which should be commanded by a window in his Grace's study, so that no one could enter or leave the dwelling clandestinely.—*R. North's Life of Guilford*, i. 260.

2. Burnet, p. 20.

CHAP. XVII. Anecdotes of Hale's judicial purity, continued.

bought any articles after he became a Judge, he not only would not try to beat down the price, but he insisted on giving more than the vendors demanded, lest, if they should afterwards have suits before him, they should expect favor because they had dealt handsomely by him. A gentleman in the West of England, who had a deer-park, was in the habit of sending a buck as a present to the Judges of Assize, and did the same when Lord Chief Baron Hale came the circuit, although a cause in which he was plaintiff was coming on for trial. The cause being called, the following extraordinary dialogue took place in open court:

Lord C. Baron: "Is this plaintiff the gentleman of the same name who hath sent me venison?" *Judge's Servant:* "Yes, please you, my Lord." *Lord C. B.:* "Stop a bit, then. Do not yet swear the jury. I cannot allow the trial to go on till I have paid him for his buck." *Plaintiff:* "I would have your Lordship to know, that neither myself nor my forefathers have ever sold venison, and I have done nothing to your Lordship which we have not done to every judge that has come this circuit for centuries bygone." *Magistrate of the County:* "My Lord, I can confirm what the gentleman says for truth, for twenty years back." *Other Magistrates:* "And we, my Lord, know the same." *Lord C. B.:* "That is nothing to me. The Holy Scriptures say, 'a gift perverteth the ways of judgment;' I will not suffer the trial to go on till the venison is paid for. Let my butler count down the full value thereof." *Plaintiff:* "I will not disgrace myself and my ancestors by becoming a venison-butcher. From the needless dread of *selling* justice, your Lordship *delays* it. I withdraw my record."

So the trial was postponed till the next assizes, at the costs of the man who merely wished to show a usual civility to the representative of the sovereign.

According to a custom which prevailed, "from time whereof the memory of man runneth not to the contrary," the Dean and Chapter[1] of Salisbury had

1. The Chapter is the body of clergy attached to the cathedral. Originally this body was the assembly of the priests of the diocese round their

presented to the Judges of Assize six sugar loaves. Lord Chief Baron Hale, when upon the Western Circuit, having received the usual donation, discovered that the Dean and Chapter had a cause coming on before him for trial, and he sent his servant to pay for the sugar loaves before he would allow it to be entered. Those venerable litigants, instead of firing up at the notion of their becoming "grocers," or taunting the Judge, as they might have done, with making them

bishop. It was the bishop's general council, and contained within it the bishop's officials for the administration of the diocese, and the clergy who had the care of the services of the cathedral itself. The chapter in the bishop's council soon fell into disuse, and the name was applied almost entirely to the clergy of the cathedral church itself, who soon gained a position almost independent of their bishop. Chapters in England were of two kinds—monastic and secular. The monastic chapters were like monasteries, over which the bishop ranked as abbot, though the resident prior was the real head. These monks were in England Benedictines, except in the case of Carlisle, where they were Augustinians. In the secular chapters, the dean rises into prominence in the eleventh century. The work of his diocese, the necessity of constant journeys, and the increase of secular business undertaken by the bishop left the cathedrals without a head, and the chapters everywhere began to manage their business without their bishop. The theory that the chapter elected the bishops gave them at times a position of some importance, both towards the King and the Pope. Chapters frequently appealed to Rome against their bishops, and often were successful in obtaining privileges from the Pope. The separation of the chapter from the bishop became more and more definite, till the bishop was left with no powers save those of visitor over his chapter. The chief officers of the secular chapter were: the *dean*, who was head of the body; the *præcentor*, who superintended the services; the *chancellor*, who was head of the educational and literary works of the chapter; and the *treasurer*, who had the care of all the treasures of the Church. Besides those there were the *archdeacons*, who were the sole survivors of the diocesan organization of the chapter. Its other members were *canons*, as bound by the rule, or *prebendaries*, if they held an endowment besides their share of the corporate fund. This last body was generally non-resident, and their duties were performed by *vicars*, who are now called *vicars-choral* or *minor canons*. Under Henry VIII. the monasteries attached to the cathedrals were suppressed, and their chapters were refounded as secular chapters under a dean. After the same model the cathedrals of the new bishoprics founded by Henry VIII. were arranged. Hence came the two classes—*Cathedrals of the Old Foundation* and *Cathedrals of the New Foundation*. An act of 1838 reformed cathedral chapters by diminishing the number of canons, reducing their incomes, and bringing all chapters to greater uniformity.—*Low and Pulling's Dict. of Eng. Hist.*

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violate the statute of Henry VIII. against "clerical trading," received the money, tried their cause, and obtained a verdict.

Attempt to corrupt him.

On another occasion, there really was a paltry attempt to corrupt him, which he very properly exposed. During the assizes at Aylesbury, one Sir John Croke, who was unjustly prosecuting a respectable clergyman as a robber, for merely entering his house to demand tithes, in the foolish hope of conciliating the Judge, sent to his lodgings two loaves of sugar, which were immediately returned. When the prosecution had blown up, and the prisoner had been acquitted, the Lord Chief Baron called for the prosecutor, but was told that he had made off:

Extract from "The Perjured Phanatic."

Lord C. Baron: "Is Sir John Croke gone? Gentlemen, I must not forget to acquaint you, for I thought that Sir John Croke had been here still, that this Sir John Croke sent me, this morning, two sugar loaves for a present. I did not then know so well as now, what he meant by them; but, to save his credit, I sent his sugar loaves back again. Mr. Clerk of Assize, did you not send Sir John his sugar loaves back again?" *Clerk of Assize:* "Yes, my Lord, they were sent back again." *Lord C. Baron:* "I cannot think that Sir John believes that the King's Justices come into the country to take bribes. I rather think that some other person, having a design to put a trick upon him, sent them in his name. Gentlemen, do you know this hand?" (showing to the gentlemen of the grand jury the letter which accompanied the sugar). *Foreman:* "I fear me it is Sir John's, for I have often seen him write, doing justice business along with him; and your Lordship may see that it is the same with this *mittimus* written and signed by him." *Lord C. B.* (putting the letter back into his bosom): "I intend to carry it with me to London, and I will relate the foulness of the business, as I find occasions."[1]

1. "The Perjured Phanatic," an account of the trial, 2d edition, 1710. The late Baron Graham related to me the following anecdote to show that he had more firmness than Judge Hale: "There was a baronet of ancient family with whom the Judges going the Western Circuit had always been accustomed to dine. When I went that circuit, I heard that a cause in which he was plaintiff was coming on for trial; but the usual invitation

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Roger North's censure of Hale.

Hale is severely criticised as a Judge, though not altogether candidly, by Roger North, the brother and biographer of Lord Keeper Guilford. The Norths, too, had been bred up among the Puritans, but they went over to the ultra high-Church party, and regarded all who did not go the same length with themselves as schismatics and republicans. Hale had softened them a little by taking kindly notice of Mr. Francis, when a very young barrister on the Northern Circuit.[1] But when Sir Francis was advanced to be a member of the House of Commons, to be Attorney General, and to be Chief Justice of the Common Pleas, and when he persecuted the Dissenters, he looked with envy and enmity at his former patron, whose conduct and reputation formed such a contrast with his own. Before he became Lord Chancellor and a peer, Hale had been taken to a quieter world; yet the Norths continued to bear him a grudge, and to carp at his decisions, his principles, and his manners. With true fraternal sympathy, thus writes Roger:

"The truth is, his Lordship [Lord Guilford] took early into a course diametrically opposite to that approved by Hale; for the principles of the latter, being demagogical, could not allow much favor to one who rose a monarchist declared. He was an upright judge if taken within himself; and when he appeared, as he often did, and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations, and sometimes the very habits of persons. If one party was courtier

was received, and, lest the people might suppose that Judges could be influenced by a dinner, I accepted it. The defendant, a neighboring squire, being dreadfully alarmed by this intelligence, said to himself, 'Well, if Sir John entertains the Judge hospitably, I do not see why I should not do the same by the Jury.' So he invited to dinner the whole of the special jury summoned to try the cause. Thereupon the baronet's courage failed him, and he withdrew the record, so that the cause was not tried; and, although I had my dinner, I escaped all suspicion of partiality."

1. When the little gentleman was once struggling through a crowd in court, Hale said from the bench, "Make way for the little gentleman there, for he will soon make way for himself."—*Life of Guilford.*

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Roger North's censure of Hale, continued.

and well-dressed, and the other a sort of puritan with a black cap and plain clothes, he insensibly thought the justice of the cause with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial; and the loyalists had always a great disadvantage before him. And he ever sat hard on his Lordship in his practice in causes of that nature. It is said he was once caught. A courtier who had a cause to be tried before him, got one to go to him as from the King, to speak for favor to his adversary, and so carried his point; for the Chief Justice could not think any person to be in the right that came so unduly recommended. . . . He would put on the show of much valor, as if danger seemed to lie on the side of the Court, from whence either loss of his place (of which he really made no great account), or some more violent, or, as they pretended, arbitrary infliction might fall upon him. Whereas, in truth, that side was safe, which he must needs know, and that all real danger to a judge was from the imperious fury of a rabble, who have as little sense and discretion as justice, and from the House of Commons, who seldom want their wills, and, for the most part, with the power of the Crown, obtain them. Against these powers he was very fearful; and one bred, as he was, in the rebellious times, when the government at best was but rout and riot, either of rabble committees or soldiers, may be allowed to have an idea of their tyranny, and, consequently, stand in fear of such brutish violence and injustice as they committed. But it is pleasant to consider that this man's not fearing the Court was accounted valor; that is, by the populace, who never accounted his fear of themselves to have been a mere timidity." Yet the honest biographer is obliged to add, "He became the cushion exceedingly well; his manner of hearing patient, his directions pertinent, and his discourses copious, and, although he hesitated, often fluent. His stop for a word, by the produce, always paid for the delay; and on some occasions he would utter sentences heroic. One of the bankers, a courtier, by name Sir Robert Viner, when he was Lord Mayor of London, delayed making a return to a *mandamus*, and the prosecutor moved for an attachment against him. The recorder, Howel, appeared, and, to avert the rule for an attachment, alleged the greatness of his magistracy, and the disorder that might happen to the City if the Mayor were imprisoned. The Chief Justice put his thumbs in his girdle, as his way was, and 'Tell me of the Mayor of

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Roger North's censure of Hale, continued.

London!' said he, 'tell me of the Mayor of Queenborough!' . . . His Lordship knew him perfectly well, and revered him for his great learning in the history, law, and records of the English constitution. I have heard him say that while Hale was Chief Baron of the Exchequer, by means of his great learning, even against his inclination, he did the Crown more justice in that court than any others in his place had done, with all their good will and less knowledge. His foible was yielding towards the popular; yet, when he knew the law was for the King (as well he might, being acquainted with all the records of the Court, to which men of the law are commonly strangers), he failed not to judge accordingly.[1]—I have known the Court of King's Bench sitting every day from eight to twelve, and the Lord Chief Justice Hale managing matters of law to all imaginable advantage to the students, and in which he took a pleasure, or rather pride. He encouraged inquiry when it was to the purpose, and used to debate with the counsel, so as the court might have been taken for an academy of sciences, as well as the seat of justice."[2]

Hale's opinion of the validity of Quakers' marriages.

The most striking proof of Hale's impartiality, between persons of opposite political parties, and opposite religious persuasions, will be found in a list of cases made out by the Norths, in which he is alleged to have been misled by his prejudices. In all of them, except one, it will be found that he lays down the law correctly. Upon the question involved in that one, after it had been doubted for near two centuries, the House of Lords, a few years ago, were equally divided, and it was decided against Hale's opinion only on the technical rule *semper prosumitur pro negante*. The charge was, that he had heretically countenanced Quakers' marriages, by allowing a special verdict to be taken to try their validity. "This," says Roger North, "was gross in favor of those worst of sectaries; for if the circumstances of a Quaker's marriage were stated in evidence, there was no color for a special

1. Roger North's Life of Lord Guilford, i. 111–115.
2. Study of the Laws, p. 32.

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verdict; for how was a marriage by a layman, without the liturgy, good? But here, though the right was debated, and could not be determined for the Quakers, yet a special verdict upon *no point* served to baffle the party who would take advantage of the nullity."[1]

The case in dispute.

The truth was, as we know from Bishop Burnet, that a Quaker was sued before Chief Baron Hale for debts owing by the wife, a Quakeress, *dum sola*,[2] after they had long lived together as man and wife, and had a numerous family; and the defendant's counsel contended that there was no marriage between them, since it was not celebrated by a priest in orders, according to the rites of the Church of England. The Judge said he was not willing, by a *nisi prius*[3] decision, to bastardize the children, and directed the jury to find a special verdict, saying "he thought it reasonable, and consistent with natural right and the precepts of the Gospel, that all marriages made according to the several religious persuasions of the parties ought to be valid in law."[4] Whether his opinion, therefore, was right or wrong, the accusation that he on this occasion showed any undue partiality to Dissenters is wholly unfounded.

1. Life of Guilford, i. 126. 2. "While alone."

3. *Nisi prius* (Law), unless before;—a phrase applied to terms of court, held generally by a single judge, with a jury, for the trial of jury causes. The term originated in a legal fiction. An issue of fact being made up, it is, according to the English practice, appointed by the entry on the record, or written proceedings, to be tried by a jury from the county of which the proceedings are dated, at Westminster, *unless before* the day appointed (*nisi prius*) the judges shall have come to the county in question, which they always do, and there try the cause.—*Brande-Tomlins, New Am. Cyc.*

4. Burnet, p. 44. I am glad to think that this is the common law of Scotland, and is now the statute law of England; but in countries governed by the common law of England on this subject the greatest confusion now prevails, by Hale's doctrine having been overruled. The special verdict was never argued, and the law remained uncertain till the reign of Queen Victoria. In the session of 1847 I introduced and passed a bill to declare valid Quaker marriages which had been contracted prior to the General Dissenters' Marriage Act of 1837, which was only prospective. See 11 and 12 Vic. c. 58.

CHAP. XVII. The case of John Bunyan, author of "The Pilgrim's Progress," before Hale.

His demeanor in the case of John Bunyan,[1] the author of THE PILGRIM'S PROGRESS, shows him paying respect both to the rules of law and to the dictates of humanity. This wonderful man,—who, though bred a tinker, showed a genius little inferior to that of Dante,—having been illegally convicted by the court of quarter sessions, was lying in prison under his sentence, in the jail of Bedford. Soon after the restoration of Charles II., the young enthusiast had been arrested while he was preaching at a meeting in a private house, and, refusing to enter into an engagement that he would preach no more, had been indicted as "a person who devilishly and perniciously abstained from coming to church to hear divine service, and a common upholder of unlawful meetings and conventicles, to the great disturbance and distraction of the good subjects of this realm." At his arraignment, he said, "Show me the place in the Epistles where the Common Prayer-book is written, or one text of Scripture that commands me to read it, and I will use it. But yet, notwithstanding, they that have a mind to use it, they have their liberty; that is, I would not keep them from it. But, for our own parts, we can pray to God without it. Blessed be His name." The Justices considered this tantamount to a plea of *guilty*, and, without referring his case to the jury, the chairman pronounced the following judgment: "You must be had back to prison, and there lie for three

1. John Bunyan (*b.* 1628, *d.* 1688), author of *The Pilgrim's Progress*, was a tinker by trade, belonging to a Bedfordshire family. In 1656 he began to preach in Bedford as a Baptist, his sermons being extremely popular. In 1660 he was committed to Bedford jail for his religious teaching, and he remained there for twelve years. During this period he wrote his *Grace Abounding* and *The Holy City*. In 1672 he was released, and resumed his preaching before great crowds. During a second imprisonment, in 1675, he wrote *The Pilgrim's Progress*. He built a meeting-house in Bedford, and annually visited the Baptist congregation in London, where he died. The *Holy War* was written in 1682.—*Cassell's Biog. Dict.*

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The case of John Bunyan, continued.

months following; and at three months' end, if you do not submit to go to church to hear divine service, and leave your preaching, you must be banished the realm. And if, after such a day as shall be appointed you to be gone, you shall be found in this realm, or be found to come over again without special license from the King, you must stretch by the neck for it; I tell you plainly."

Arbitrary as the laws then were, there was no clause in any statute that would support this sentence; yet Bunyan was imprisoned under it, as he refused to give surety that he would abstain from preaching. Elizabeth, his wife, actuated by his undaunted spirit, applied to the House of Lords for his release; and, according to her relation,[1] she was told "they could do nothing; but that his releasement was committed

July, 1661. to the Judges at the next assizes." The Judges were Sir Matthew Hale and Mr. Justice Twisden; and a remarkable contrast appeared between the well-known *meekness* of the one, and *fury* of the other.[2] Elizabeth came before them, and, stating her husband's case, prayed for justice:

The pleading of his wife before Hale and Twisden.

"Judge Twisden," says John Bunyan, "snapt her up, and angrily told her that I was a convicted person, and could not be released unless I would promise to preach no more."[3] *Elizabeth:* "The Lords told me that releasement was committed to you, and you gave me neither releasement nor relief. My husband is unlawfully in prison, and you are bound to discharge him." *Twisden:* "He has been lawfully convicted." *Elizabeth:* "It is false, for when they said 'Do you confess the indictment?' he answered, 'At the meetings where he preached, they had God's presence among them.'" *Twisden:* "Will your husband leave preaching? if he will do so, then send for him." *Elizabeth:* "My Lord, he dares not leave off preaching

1. A Relation of the Imprisonment, etc., ed. 1765, p. 44.

2. The contemporary reporters, in recording Twisden's judgments, begin "Twisden, *in furore*, observed," etc.

3. A Relation, etc., p. 41.

JOHN BUNYAN.

From a Drawing in the British Museum.

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as long as he can speak. But, good my Lords, consider that we have four small children, one of them blind, and that they have nothing to live upon, while their father is in prison, but the charity of Christian people. I myself *smayed* at the news when my husband was apprehended, and, being but young, and unaccustomed to such things, fell in labor; and, continuing in it for eight days, was delivered of a dead child." *Sir Matthew Hale:* "Alas, poor woman!" *Twisden:* "Poverty is your cloak, for I hear your husband is better maintained by running up and down a-preaching than by following his calling." *Sir Matthew Hale:* "What is his calling?" *Elizabeth:* "A tinker, please you, my Lord; and because he is a tinker, and a poor man, therefore he is despised, and cannot have justice." *Sir Matthew Hale:* "I am truly sorry we can do you no good. Sitting here, we can only act as the law gives us warrant; and we have no power to reverse the sentence, although it may be erroneous. What your husband said was taken for a confession, and he stands convicted. There is, therefore, no course for you but to apply to the King for a pardon, or to sue out a writ of error; and, the indictment, or subsequent proceedings, being shown to be contrary to law, the sentence shall be reversed, and your husband shall be set at liberty. I am truly sorry for your pitiable case. I wish I could serve you, but I fear I can do you no good."

The case of John Bunyan, continued.

Bunyan as yet was not distinguished from the great crowd of enthusiasts who were then desirous of rivalling the heroes of Fox's Martyrology,—their favorite manual. Hale, making inquiries about him, was told that he was "a hot-spirited fellow," and actually found that there would be no use in supplying the means of prosecuting a writ of error, as, if set at liberty, he would soon get into worse durance, for at Bedford he was very kindly treated by a humane jailer, and his family were cared for by the Puritans of the town and neighborhood. When the Judges were trumpeted out of Bedford, leaving the tinker still in prison, he was very wroth; and Elizabeth burst into tears, saying, "Not so much because they are so hard-hearted against me and my husband, but to think what a sad

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account such poor creatures will have to give at the coming of the Lord."

Little do we know what is for our permanent good. Had Bunyan then been discharged and allowed to enjoy liberty, he no doubt would have returned to his trade, filling up his intervals of leisure with field-preaching; his name would not have survived his own generation, and he could have done little for the religious improvement of mankind. The prison doors were shut upon him for twelve years. Being cut off from the external world, he communed with his own soul; and, inspired by Him who touched Elijah's hallowed lips with fire, he composed the noblest of allegories, the merit of which was first discovered by the lowly, but which is now lauded by the most refined critics; and which has done more to awaken piety, and to enforce the precepts of Christian morality, than all the sermons that have been published by all the prelates of the Anglican Church.[1]

Trial of the witches at Bury St. Edmunds. A.D. 1665.

I wish to God that I could as successfully defend the conduct of Sir Matthew Hale in a case to which I most reluctantly refer, but which I dare not, like Bishop Burnet, pass over unnoticed,—I mean the famous trial before him, at Bury St. Edmunds, for witchcraft. I fostered a hope that I should have been able, by strict inquiry, to contradict or mitigate the hallucination under which he is generally supposed to have then labored, and which has clouded his fame,—even in some degree impairing the usefulness of that bright example of Christian piety which he left for the edification of mankind. But I am much concerned to say, that a careful perusal of the proceedings and of the evidence shows that upon this occasion he was not only under the influence of the most vulgar credulity, but that he violated the plainest rules of justice, and

1. See Southey's Life of John Bunyan.

CHAP. XVII. Trial of the witches at Bury St Edmunds, continued.

that he really was the murderer of two innocent women. I would very readily have pardoned him for an undoubting belief in witchcraft, and I should have considered that this belief detracted little from his character for discernment and humanity. The Holy Scriptures teach us that, in some ages of the world, wicked persons, by the agency of evil spirits, were permitted, through means which exceed the ordinary powers of nature, to work mischief to their fellow-creatures. These arts, which were said to have been much practised in popish times, were supposed to have become still more common at the Reformation. Accordingly, the statute 33 Hen. VIII. c. 8 made all witchcraft and sorcery *felony without benefit of clergy*,[1] and by 1 Jac. I. c. 12 (passed when Lord Bacon was a member of the House of Commons) the capital punishment was extended to "all persons invoking an evil spirit, or consulting, covenanting with, entertaining, employing, *feeding*, or rewarding any evil spirit, or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment." There had been several prosecutions on these statutes in the reigns of James I. and Charles I.,—when con-

1. Benefit of Clergy was the right claimed by the clergy to immunity from secular jurisdiction in certain cases. Cases in which it might be urged were such as affected the life or limbs of the offender, with the single exception of high treason. It was at first restricted to *bonâ-fide* clerics, but subsequently got extended to all who could read a verse in the Psalter, known as the "neck-verse," generally out of the 51st Psalm. Should it be declared by the bishop's commissary that the prisoner read it like a clerk, he was delivered over to the ecclesiastical jurisdiction. It was, however, an indictable offence at common law to teach a felon to read in order that he might claim benefit of clergy. The abuse of this custom was very great, and in the 15th and 16th centuries it produced constant disputes between the judges and ordinaries. Henry VII., in 1488, restricted it by declaring that it should not be allowed more than once to persons not actually in orders, and in Queen Anne's reign the neck-verse was no longer required to be read. Benefit of clergy was not finally abolished till the reign of George IV. Benefit of clergy never extended to women till they were included by the statute 3 and 4 Will III.—*Low and Pulling's Dict. of Eng. Hist.*

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Trial of the witches at Bury St. Edmunds, continued.

victions had taken place on the confession of the accused;—in the trial of the murderers of Sir Thomas Overbury it had appeared that Mrs. Turner was believed to be a witch, not only by the Countess of Essex, but by the King and all his Court;—and although magic and the black art had lately lost much credit, yet, in the reign of Charles II., a judge who from the bench should have expressed a disbelief in them would have been thought to show little respect for human laws, and to be nothing better than an atheist. Had the miserable wretches, indicted for witchcraft before Sir Matthew Hale, pleaded *guilty*, or specifically confessed the acts of supernatural agency imputed to them, or if there had been witnesses who had given evidence, however improbable it might be, to substantiate the offence, I should hardly have regarded the Judge with less reverence because he pronounced sentence of death upon the unhappy victims of superstition, and sent them to the stake or the gibbet. But they resolutely persisted in asserting their innocence, and there not only was no evidence against them which ought to have weighed in the mind of any reasonable man who believed in witchcraft, but during the trial the imposture practised by the prosecutors was detected and exposed.

Evidence upon which the conviction took place.

The reader may like to have a sketch of this last capital conviction in England for the crime of *bewitching*. Indictments were preferred jointly against Amy Duny and Rose Cullender, two wrinkled old women, for laying spells upon several children, and in particular William Durent, Elizabeth Pacy, and Deborah Pacy. The trial began with proof that witnesses, who were to have given material evidence, as soon as they came into the presence of the clerk of assize, were seized with dumbness, or were only able to utter inarticulate sounds. A strong corroboration of the guilt

Evidence upon which the conviction took place, continued.

of the prisoners was stated to be, that these witnesses remained in the same cataleptic state till the verdict was pronounced, and were thereupon instantly cured. The bewitching of William Durent rested on the testimony of Dorothy, his mother, who said,—

"About seven years ago, having a special occasion to go from home, I desired Amy Duny, my neighbor, to look to my boy Billy, then sucking, during my absence, promising her a penny for her pains; I desired her not to suckle my child; I very well knew that she was an old woman, and could not naturally give suck, but, for some years before, she had gone under the reputation of a witch; nevertheless, she did give suck to the child, and that very night he fell into strange fits of swounding, and was held in a terrible manner, insomuch that I was terribly frightened therewith, and so continued for divers weeks. I then went to a certain person named Dr. Jacob, who lived at Yarmouth, and had the reputation in the country to help children who were bewitched. He advised me to put the child by the fire in a blanket, and if I found anything in the blanket with the child, to throw it into the fire. I did so that same night, and there fell out of the blanket a great toad, which ran up and down upon the hearth. I seized the great toad with a pair of tongs, and thrust it into the fire. Thereupon it made a great and horrible noise; and after a space there was a flashing in the fire like gunpowder, making a noise like the discharge of a pistol; and after the flashing and noise, the substance of the toad was gone without being consumed in the fire. The next day there came a young woman, a kinswoman of the said Amy, and told me that her aunt was in a most deplorable condition, having her face, legs, and thighs all scorched, and that she was sitting alone in the house in her smock without any fire: and please you, my Lord, after the burning of the said toad, my child recovered, and was well again, and is now still living."

With respect to the two girls named Pacy,—Deborah was so cruelly bewitched, that she could not be brought to the assizes; but Elizabeth appeared in court, and, although deprived of speech, and with her eyes shut, she played many antics, particularly when, "by the direction of the Judge," Amy Duny touched

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Evidence upon which the conviction took place, continued.

her. Then the father of the girls proved, that he having refused Amy Duny and Rose Cullender some herrings which they asked for,[1] they were very angry, and, soon after, the girls were taken in a strange way, and spat up large quantities of pins and twopenny nails (which were produced in court), and declared that Amy Duny and Rose Cullender visited them in the shape of a bee and of a mouse, and tormented them from time to time for many weeks. It was further proved, that the two prisoners being taken up under a Justice's warrant as witches, and their persons being examined, Rose Cullender was discovered to have a secret teat, which she said was the effect of a strain from carrying water, but which a witness swore had been lately sucked.

Kelynge unsatisfied with the evidence and deems it insufficient.

Mr. Sergeant Kelynge, who was either joined in the commission as one of the Judges, or acted as *amicus curiæ*, "declared himself much unsatisfied with this evidence, and thought it not sufficient to convict the prisoners; for, admitting that the children were in truth bewitched, yet," said he, "it can never be applied to the prisoners upon the imagination only of the parties afflicted; for if that might be allowed, no person whatsoever can be in safety, for, perhaps, they might fancy another person who might altogether be innocent in such matters."

To strengthen the case, Dr. Brown, of Norwich, supposed to have deep skill in demonology, was called as an *expert*, and after giving it as his clear opinion that the children were bewitched, added, that "in Denmark there had lately been a great discovery of witches, who used the very same way of afflicting persons by conveying pins into them, with needles and nails; and he thought that the Devil, in such cases, did work upon

1. Very much like the witch in Macbeth:

"A sailor's wife had chestnuts in her lap,
And mounch'd, and mounch'd, and mounch'd: *Give me*, quoth I."

But here there was no such provoking language as "*Aroint thee, witch!*"

the bodies of men and women by a natural inundation." CHAP. XVII.

An experiment was made, by Sergeant Kelynge and several other gentlemen, as to the effect of the witch's touch. Elizabeth Pacy, being conducted to a remote part of the hall, was blindfolded, and in her fit was told that Amy Duny was approaching, when another person touched her hand,—which produced the same effect as the touch of the witch did in court. "Whereupon the gentlemen returned, openly protesting that they did believe the whole transaction of this business was a mere imposture. This put the Court and all persons into a stand." Detection of the imposture.

However, the prosecutors tried to bolster up the case by proof that Rose Cullender, once on a time, being angry because a cart had wrenched the window off her cottage, must, in anger, have bewitched this cart, because it was repeatedly overturned that day while other carts went smoothly along the road,—and that Amy Duny had been heard to say, "the Devil would not let her rest until she were revenged on one Anne Sandewell, who, about seven or eight years ago, having bought a certain number of geese, was told by Amy Duny that they would all be destroyed, which accordingly came to pass." The witnesses being all examined,—instead of stopping the prosecution and directing an acquittal, Lord Chief Baron Hale summed up in these words; clearly intimating that, in his opinion, the jury were bound to convict: The prosecutors try to bolster up the case.

"Gentlemen of the jury, I will not repeat the evidence unto you, lest by so doing I should wrong it on the one side or on the other. Only this I will acquaint you, that you have two things to inquire after: *first*, whether or no these children were bewitched? *secondly*, whether the prisoners at the bar were guilty of it? That there are such creatures as witches, I make no doubt at all; for first, the Scriptures have affirmed so much; secondly, the wisdom of all nations hath Hale's summing up.

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provided laws against such persons, which is an argument of their confidence of such a crime; and such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence. I entreat you, gentlemen, strictly to examine the evidence which has been laid before you in this weighty case, and I earnestly implore the great God of Heaven to direct you to a right verdict. For to condemn the innocent and to let the guilty go free, are both an abomination unto the Lord."

The jury, having retired for half an hour, returned a verdict of *guilty* against both the prisoners on all the indictments; and the Judge, putting on his black cap, after expatiating upon the enormity of their offence, and declaring his entire satisfaction with the verdict, admonished them to repent, and sentenced them to die.

Execution of the witches.

The bewitched children immediately recovered their speech and their senses, and slept well that night. Next morning, Sir Matthew, much pleased with his achievement, departed for Cambridge, leaving the two unhappy women for execution. They were eagerly pressed to confess, but they died with great constancy, protesting their innocence.[1]

Hale's motives in favoring this.

Hale's motives were most laudable; but he furnishes a memorable instance of the mischiefs originating from superstition. He was afraid of an acquittal or of a pardon, lest countenance should be given to a disbelief in witchcraft, which he considered tantamount to a disbelief in Christianity. The following Sunday he wrote a "Meditation concerning the mercy of God in preserving us from the malice and power of Evil Angels," in which he refers, with extreme complacency, to the trial over which he had presided at Bury St. Edmunds.[2]

1. Trial of the Witches at Bury St. Edmunds, 1682; 6 St. Tr. 647–702.

2. This "Meditation" was published in the year 1693, with a preface, in which the editor praises it "as an evidence of the judgment of so great, so learned, so profound and sagacious, so cautious, circumspect, and tender

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How this violation of justice has been regarded by posterity.

Although, at the present day, we regard this trial as a most lamentable exhibition of credulity and inhumanity, I do not know that it at all lowered Hale in public estimation during his own life; but in the middle of the 18th century it was thus censured by Sir Michael Foster: "This great and good man was betrayed, notwithstanding the rectitude of his intentions, into a lamentable mistake, under the strong bias of early prejudice."[1] The enormous violation of justice then perpetrated has become more revolting as the mists of ignorance, which partially covered it, have been dispersed. How much more should we honor the memory of Hale, if, retaining all his ardent piety, he had anticipated the discovery of Lord Chief Justice Holt, who put an end to witchcraft by directing prosecutions against the parties who pretended to be bewitched, and punishing them as cheats and impostors![2]

It would be very agreeable to diversify these painful details with some anecdotes of Hale in private life; but we have none of his "Table Talk," while that of his contemporary Selden is so amusing; and we must be contented with his judgments and his writings. He hardly ever went into society, or entertained company at home. He had no dwelling in London, except his chambers in Sergeants' Inn. Soon after he was made Chief Baron he took a cottage at Acton, where he had for his neighbor the celebrated Richard Baxter

Hale's intimacy with Baxter.

a man, in matters of life and death, upon so great deliberation (for he knew by his calendar beforehand what a cause he was to try, and he well knew the notions and sentiments of the age), and, upon so solemn an occasion, to check and correct the *impiety*, the vanity, the self-conceitedness, or baseness of such witch advocates as confidently maintain that there are no witches at all."

1. Preface to Reports, p. vii.

2. See Hathaway's Case, 14 St. Tr. 630. The statutes against witchcraft were not repealed till 9 Geo. II. c. 5. Bl. Com. iv. 61; 3d Institute, 43.

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—now ejected from his office of King's Chaplain, conferred upon him at the Restoration, but not yet persecuted under the "Conventicle" and "Five-mile" acts. The worthy Nonconformist gives us this interesting account of the manner in which they made each other's acquaintance:

Baxter's account of how their acquaintance began.

"We sat next seats together at church many weeks;[1] but neither did he ever speak to me nor I to him. At last, my extraordinary friend, Sergeant Fountain, asked me 'why I did not visit the Lord Chief Baron?' I told him, 'because I had no reason for it, being a stranger to him; and had some against it, viz., that a judge, whose reputation was necessary to the ends of his office, should not be brought within court suspicion or disgrace, by his familiarity with a person whom the interest and diligence of some prelates had rendered so odious.' The Sergeant answered, 'It is not meet for him to come first to you; I know why I speak it; let me entreat you to go first to him.' In obedience to which request I did it; and so we entered into neighborly familiarity. I lived then in a small house, but it had a pleasant garden, which the honest landlord had a desire to sell. The Judge had a mind to the house, but he would not meddle with it till he got a stranger to me to come and inquire of me whether I was willing to leave it? I answered, 'I was not only willing but desirous,' and so he bought it, and lived in that poor house till his mortal sickness sent him to the place of his interment."[2]

A.D. 1668.

It was about this time that Hale, although he had laid down a rule nevermore to mix with any public affairs, was induced to assist in furthering a plan for bringing about a "comprehension," i.e., an extension of the Establishment which should comprehend the Presbyterians, in fulfilment of the Declaration from Breda and the promises made upon the King's restoration. Clarendon, who had been guilty of flagrant perfidy upon this subject, was now in exile; and Sir

1. This means the parish church, which Baxter still frequented, although he occasionally preached to a congregation of his own.

2. Baxter's Works, i. 95.

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Orlando Bridgman, who had succeeded him on the woolsack, was friendly to the proposal. The King himself secretly favored the Papists—his own co-religionists—and he hoped that something to their advantage might arise from his affecting a love of toleration.

Hale prepares a bill to be presented to parliament for a "comprehension."

There were several conferences held with a view to this "comprehension," the interests of the Church of England being attended to by Dr. Wilkins,[1] Bishop of Chester,—"a man," says Burnet, "of as great a mind, as true a judgment, as eminent virtues, and of as good a soul, as any I ever knew;" and those of the Presbyterians by Baxter, of whom it was often observed, that "if he had lived in the early ages of Christianity he would have been one of the fathers of the Church."

The articles agreed upon by Wilkins and Baxter.

Articles having been, at last, agreed upon, which were substantially the same which Hale, when member for Gloucestershire, had proposed in the Convention Parliament, it was very naturally the wish of both parties that he should be intrusted to reduce them into the form of a bill to be proposed to the two Houses of Parliament at their next meeting. He readily performed the task; and he had only a few alterations to make in the draught which he had prepared at the time when Clarendon dexterously elevated him to the bench. But the bright prospect was soon overcast.

Hale's bill substantially the same as his "Comprehension Bill" of 1660.

1. John Wilkins was born 1614, at Pawsley, Northamptonshire, in the house of his grandfather, John Dod, the Nonconformist. He was educated at Oxford, first in New Inn Hall, and next in Magdalen Hall. In the civil war he adhered to the Parliament, and was made warden of Wadham College. Here he formed the philosophical association which, after the Restoration, was named the Royal Society. In 1656 he married the widow of Dr. French, and sister to Oliver Cromwell, from whom, as the marriage was contrary to the statutes, he obtained a dispensation. In 1659 he was appointed master of Trinity College, Cambridge, from which he was ejected the year following. He then became preacher to the Society of Gray's Inn, and rector of St. Lawrence Jewry. In 1668 he was consecrated Bishop of Chester. He died in London Nov. 19, 1672.—*Cooper's Biog. Dict.*

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Two powerful parties resisted the design of "comprehension," with equal zeal. The bigoted clergy "thought it below the dignity of the Church to alter laws, and change settlements, for the sake of some whom they esteemed *schismatics:* they also believed it was better to keep them out of the Church than bring them into it, since a faction upon that would arise in the Church which they thought might be more dangerous than the schism itself was."[1] The Popish party likewise became alarmed at the approaching union of all orthodox Protestants, and were eager that the Dissenters should be still oppressed, so that they might be driven to consent to an *indulgence* which would extend to the professors of the ancient faith. Accordingly, when the House of Commons met, leave was refused to bring in the bill; and, on the contrary, measures were brought forward against *conventicles*, and against *occasional conformity*, which greatly aggravated the sufferings of the Presbyterians, —while a declaration of indulgence sheltered the Roman Catholics, till it excited such a tumult in the nation that the King was obliged to recall it. The firm friendship so contracted continued to subsist between Dr. Wilkins and the Chief Baron, who, "having much business and little time to spare, did, to enjoy the other the more, what he had scarce ever done before; he went sometimes to dine with him, and though he lived in great friendship with some other eminent clergymen, yet there was an intimacy and freedom in his converse with Bishop Wilkins that was singular to him alone."[2]

Leave refused to bring in the bill.

Hale's intimacy with Wilkins, Bishop of Chester.

While caressed by Wilkins, Barrow,[3] Tillot-

1. Burnet, p. 25. 2. Burnet, p. 24.

3. Isaac Barrow, an English prelate, was born at Spinney Abbey, Cambridgeshire, 1613, and educated at Peterhouse, Cambridge, of which he became Fellow, but was ejected by the Presbyterians in 1643. He then went to Oxford, and was appointed one of the chaplains of New College,

JOHN TILLOTSON, ARCHBISHOP OF CANTERBURY.

son,[1] and Stillingfleet,[2] the great ornaments of the Establishment, Hale kept up, as long as he could, his intimacy with the venerable leader of the Nonconformists, and, if the law had permitted, would have been delighted to reap the benefit of his ministrations: CHAP. XVII.

"When I went," says Baxter, "out of the house in which he succeeded me, I went into a greater, over against the church door. The town having great need of help for their souls, I preached between the public sermons in my house, taking the people with me to the church (to common prayer and sermon) Baxter's account of Hale's behavior to him.

till the surrender of that city to the parliamentarians obliged him to shift from place to place. At the Restoration he was consecrated Bishop of Sodor and Man, from whence he was afterwards translated to St. Asaph. He was a great benefactor to both bishoprics. Died June 24, 1680.—*Cooper's Biog. Dict.*

1. John Tillotson, a celebrated English prelate, born in Yorkshire in 1630. He studied at Clare Hall, Cambridge, where he became a Fellow in 1651. Though educated a Calvinist, he subsequently conformed to the Church of England, and, having taken holy orders, he was appointed in 1664 preacher at Lincoln's Inn and St. Lawrence's Church in the Jewry, where he acquired a very high reputation as a pulpit orator. Under the reign of Charles II. he became successively Dean of Canterbury (1672), Prebendary of St. Paul's (1675), and Canon-residentiary of that cathedral (1677). He was created Archbishop of Canterbury by William III. in 1691. He had married Elizabeth French, a niece of Oliver Cromwell. In theology he was called a latitudinarian. Died in 1694.—*Thomas' Biog. Dict.*

2. Edward Stillingfleet, a learned prelate, descended from a Yorkshire family, was born at Cranbourne, Dorsetshire, April 17, 1635. He became Fellow of St. John's College, Cambridge, but left the University to live with Sir Roger Burgoyne, who gave him the living of Sutton, Bedfordshire. In 1569 he printed his "Irenicum, or Weapon Salve for the Church's Wounds," intended to reconcile the Episcopalians and Nonconformists, though it failed to please either party. This was followed by his "Origines Sacræ." In 1664 came out his "Rational Account of the Protestant Religion," for which he was made preacher at the Rolls, Rector of St. Andrew, Holborn, and Prebendary of St. Paul's; upon which he took his degree of D.D. In 1677 he was promoted to the archdeaconry of London, and the next year to the deanery of St. Paul's. About this time he defended the right of bishops to vote in Parliament in capital cases, and his argument put an end to the controversy. In 1685 he published his "Origines Britannicæ, or the Antiquities of the British Churches." In 1689 he was made Bishop of Worcester. At the close of life he embarked in a controversy with Locke, on some points in that writer's Essay concerning Human Understanding. The bishop died in Westminster, March 27, 1699.—*Cooper's Biog. Dict.*

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morning and evening. The Judge told me he thought my course did the church much service, and would carry it so respectfully to me at my door that all the people might perceive his approbation. But Dr. Reeves could not bear it, and complained against me, and the Bishop of London caused one Mr. Rosse and Mr. Philips, two justices of the peace, to send warrants to apprehend me. I told the Judge of the warrants, but asked him no counsel, nor did he give me any, but with tears showed his sorrow, the only time that I ever saw him weep. So I was sent to the common jail for six months."

After giving an account of his being discharged upon a *habeas corpus*, the magistrates having exceeded the law in his commitment, he goes on to say, "But this imprisonment brought me the great loss of converse with Judge Hale; for the Parliament, in the next act against conventicles, put into it divers clauses suited to my case, by which I was obliged to go dwell in another county, and to forsake both London and my former habitation."[1]

Hale's relations with Shaftesbury and Nottingham.

Hale shunned all private intercourse with the profligate Lord Chancellor Shaftesbury, but was on the most friendly terms with Lord Chancellor Nottingham, who afterwards wrote a beautiful character of him, which is introduced into his Life by Bishop Burnet. He still not unfrequently was called in as assessor in the Court of Chancery; and the principles he laid down and illustrated on these occasions materially assisted the FATHER OF EQUITY in converting into a science this great department of our juridical system.

During four years and a half he had been the honored Chief Justice of England; and, although he was well stricken in years, the public still expected long to enjoy the benefit of his services. By early rising, by exercise, and by temperance, notwithstanding his constant application to business and study (with the exception of one severe illness with which

1. Baxter's Works, i. 105–107.

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he was visited about a year after he was made Chief Baron),[1] he had enjoyed uninterrupted good health; and his constitution seemed unimpaired. But in the autumn of the year 1675 he was struck by a violent inflammatory attack, which, in two days, endangered his life, and from which he never rallied. In the following Michaelmas Term he found himself so reduced and enfeebled, that he could hardly, though supported by his servants, walk up Westminster Hall, or sit out the arguments at the bar,—which now seemed to him to be dull, flat, and unprofitable.

A.D. 1675. His health fails.

He cared little about the emoluments or the consequence of his office; and, although there was in those days no retiring pension to fall back upon, he determined to resign. But, as he never took any important step in a hurry, he composed a MEDITATION on the present aspect of his affairs:

His "Meditation" about resigning.

"1st. If I consider the business of my profession, whether as an advocate or as a judge, it is true I do acknowledge, by the institution of Almighty God and the dispensation of His providence, I am bound to industry and fidelity in it. And it is an act of obedience unto His will, it carries with it something of religious duty, and I may and do take comfort in it, and expect a reward of my obedience to Him and the good that I do to mankind therein from the bounty and beneficence and promise of Almighty God; and it is true also, that without such employments civil societies cannot be supported, and great good redounds to mankind from them; and in these respects, the conscience of my own industry, fidelity, and integrity in them, is a great comfort and satisfaction to me. But yet I must say, concerning these employments considered simply in themselves, they are very full of cares, anxieties, and perturbations. 2dly. That though they are beneficial to others, yet they are of the least benefit to him that is employed in them. 3dly. They do necessarily involve the party whose office it is in great dangers,

1. "The chiefest occasion of my sickness I could visibly impute but to a little wet taken in my head in my journey to London." On his recovery, he wrote a very pious, but very prolix and prosy, "Meditation," which may be seen at full length in Williams's Life of Hale, p. 88.

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difficulties, and calumnies. 4thly. That they only serve for the meridian of this life, which is short and uncertain. 5thly. That though it be my duty faithfully to serve in them while I am called to them, and till I am duly called from them, yet they are great consumers of that little time we have here; which, as it seems to me, might be better spent in a pious contemplative life, and a due provision for eternity. I do not know a better temporal employment than Martha had in testifying her love and duty to our Saviour by making provision for him; yet our Lord tells her, 'That though she was troubled about many things, there was only one thing necessary, and Mary had chosen the better part.'"

He solicits his "writ of ease."

His infirmities increased upon him, and a severe asthma afflicted him night and day. Baxter, describing his appearance at this time, says,—

"He had death in his lapsed countenance, flesh, and strength."[1]

Perceiving that his days were numbered, he intimated a resolution to resign his office of Chief Justice:

"This drew upon him the importunities of all his friends, and the clamor of the whole town, to divert him from it; but all was to no purpose. So he made applications to his Majesty for his '*writ of ease*,' which the King was very unwilling to grant him, offering 'to let him hold his place still, he doing what business he could in his chamber;' but he said, 'he could not with a good conscience continue in it, since he was no longer able to discharge the duty belonging to it.' Such was the general satisfaction which all the kingdom received by his excellent administration of justice, that the King, though he could not well *deny* his request, yet he *deferred* the granting of it as long as was possible."[2]

Reluctance of the Government to accept his resignation.

He several times made the same application to Lord Nottingham, the Chancellor, but was told by him still to hope for the restoration of his health, and was reminded that his predecessor, Lord Coke, had proved himself capable of serving his country at a much more advanced period of life. The reluctance

1. Works, by Thirlwall, i. 107. 2. Burnet, p. 32.

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of the Government to accept his resignation proceeded not only from a sense of his merits, but from the great difficulty which existed at that time of replacing him by a person who might be able to support the arbitrary measures which it was intended hereafter to bring forward. Jeffreys was still a flaming patriot, declaring that "he never should be bought;" and Scroggs's life was so scandalous, that Charles and his ministers were not yet sufficiently regardless of public opinion to venture on putting him at the head of the criminal law, although they were about to make him a Puisne Judge of the Common Pleas.[1]

Reasons for this.

He retires from the bench. Feb. 21, 1676.

Hale at last, with his own hand, wrote a resignation of his office, caused it to be duly enrolled in Chancery, and delivered the original into the hands of the Lord Chancellor,[2] saying that "he made this instrument for two reasons—to show the world his own free concurrence to his removal, and to obviate a scruple whether the Chief Justice of the King's Bench, being placed by writ, was removable like the other judges who were appointed by patent during pleasure." The Chancellor, finding the resignation an accomplished fact, offered no farther resistance, and conducted him to the King, "who parted from him with great grace,

His last interview with the King.

1. Dugd. Or. Jur. 118.

2. "Omnibus Christi Fidelibus ad quos præsens Scriptura pervenerit, MATTHEUS HALE, Miles, Capitalis Justiciarius Domini Regis ad placita coram ipso rege tenenda assignatus, salutem in Domino sempiternam. Noveritis me præfatum MATTHEUM HALE, Militem, jam senem factum, et variis corporis mei senilis morbis et infirmitatibus diu laborantem et adhuc detentum, hâc chartâ meâ resignare et sursum reddere Serenissimo Domino nostro CAROLO SECUNDO, Dei gratiâ Angliæ, Scotiæ, Franciæ, et Hiberniæ Regi, Fidei Defensori, etc., prædictum officium Capitalis Justiciarii ad placita coram ipso Rege tenenda, humillime petens quod hoc scriptum irrotuletur de recordo. In cujus rei testimonium huic chartæ meæ resignationis sigillum meum apposui. Dat' vicesimo primo die Februarii, anno regni dict. Dom. Regis nunc vicesimo octavo." I once witnessed a similar ceremony in the year 1834, when the venerable Sir John Bayley executed a resignation of his office of a Baron of the Exchequer in the presence of Lord Chancellor Brougham.

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wishing him most heartily the return of his health, and assuring him 'that he would still look upon him as one of his judges, and have recourse to his advice when his health would permit; and, in the mean time, would continue his pension during his life.'" [1]

Address of Lord Chancellor Nottingham to his successor.

An obscure person, of the name of Raynsford, who was expected to give little trouble, and whom it would be easy to get rid of, having, in the dearth of fit men, been selected as Chief Justice of the King's Bench, the Lord Chancellor said, at his installation, "*Onerosum est succedere bono principi*,[2] and you will find it so that are to succeed such a Chief Justice; of so indefatigable an industry, so invincible a patience, so exemplary an integrity, and so magnanimous a contempt of worldly things, without which no man can be truly great; and, to all this, a man that was so absolutely a master of the science of the law, and even of the most abstruse and hidden parts of it, that one may truly say of his knowledge in the law what St. Austin said of St. Hierome's knowledge in divinity—*Quod Hieronimus nescivit nullus mortalium unquam scivit.*" [3] The new Chief Justice, though not very original or sublime in his rhetorical figures, was determined not to be outdone in eulogy: "It doth very much trouble me," said he, "that I, who, in comparison of him, am but like a candle lighted in the sunshine, or like a glow-worm at mid-day, should succeed so great a person, that is and will be so eminently famous to all posterity."

1. Burnet, p. 33. "Pension" means *salary*. As yet there was no Civil List; the whole of the public revenue came into the Exchequer, and the King paid the Judges out of it as he did his menial servants. Sometimes extraordinary grants in time of war were put under the management of parliamentary commissioners, but all salaries or pensions were supposed to come out of the King's own pocket. A retired allowance was a mark of very extraordinary favor. On this occasion Hale wished his to be during pleasure; but Charles, seeing that the object of his bounty could not live many months, insisted upon its being for life."

2. "It is burdensome to succeed a good leader."

3. "What Hierome did not know, no mortal ever knew.

CHAPTER XVIII.

CONCLUSION OF THE LIFE OF CHIEF JUSTICE HALE.

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Hale bids a final adieu to London. Feb. 1676.

HALE was now to bid a final adieu to London. He had resolved to proceed to Alderley, his friends telling him that his constitution might yet be invigorated by his native air; and he himself being resolved here to prepare himself, in seclusion, for the great change which he knew must be at hand. He took an affectionate leave of his officers and attendants, advising them to see for themselves, as their employment was determined; giving considerable presents to such as were in want, and leaving a token with each of them. His friends all flocked round to take an affectionate leave of him; and never, when seated on his tribunal, the "beheld of all beholders," had he received homage so sincere or so touching.

His arrival at Alderley.

He travelled, by easy journeys, into Gloucestershire; and, in the beginning of March, he reached the village where his eyes had first beheld the light, and where his ashes were to repose. The scenes of his infancy, and the recollection of his youthful sports, for a while revived him; and, after saying prayers in the church, and spending some time in private devotion, he had spirits to translate a passage from Seneca's THYESTES, which he thought particularly applicable to his present circumstances. Sir Matthew was not unfrequently given to rhyme, but, considering that he was a man of classical education, and that he must have listened to the versification of Dryden, it is astounding to find his lines not only so prosaic, but so rough, lame, mean, and untunable. They are such

Hale as a poet.

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as no rhyming mechanic or waiting-maid would now produce. But—compared with his usual failure—on this occasion[1] he really seems to have been inspired by the genius of the place; and I willingly copy his translation, to show that a great lawyer may have some remote notion of poetry:

"Let him that *will*, ascend the tottering seat
Of courtly grandeur, and become as great
As are his mounting wishes: as for me,
Let sweet *repose* and *rest* my portion be.
Give *me* some mean, obscure recess,—a sphere
Out of the road of business, or the fear
Of falling lower; where I secrétly may
Myself and dear retirement still enjoy.
Let not my life or name be known unto
The grandees of the time, toss'd to and fro
By censures or applause; but let my age
Slide gently by; not overthwart the stage
Of public action,—unheard, unseen,
And unconcern'd, as if I ne'er had been.
And thus, while I shall pass my silent days
In shady privacy, free from the noise[2]
And bustles of the mad world, then shall I,
A good old innocent plebeian, die.
Death is a mere surprise, a very snare,
To him that makes it his life's greatest care
To be a public pageant; known to all,
But, unacquainted with himself, doth fall."

His last illness.

In a few days his malady returned with aggravation, and his breathing became so bad, that he was

1. "Stet, quicunque volet, potens,
Aulæ culmine lubrico:
Me dulcis saturet quies.
Obscuro positus loco,
Leni perfruar otio:
Nullis nota Quiritibus
Ætas per tacitum fluat.
Sic cum transierint mei
Nullo cum strepitu dies,
Plebeius moriar senex.
Illi mors gravis incubat,
Qui, notus nimis omnibus,
Ignotus moritur sibi."—*Thyestes*, act ii.

2. In the Gloucestershire dialect this word is pronounced *naize*, as "enjoy" is pronounced "enjay." Having many years attended the Quarter Sessions as well as the Assizes at Gloucester, I made considerable

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never able to lie down in his bed, being supported upon it, even in the night, by pillows. But he bore his sufferings with exemplary patience; and any intervals of ease which he enjoyed, he devoted to piety, and to attempts to benefit his fellow-creatures.

His neglect to publish his law treatises.

It might have been expected that he would have revised, and given to the world, some of the invaluable law treatises which he had composed; but he entirely neglected them. Indeed, he had never shown any desire to be known as a juridical writer, although he was by no means without the ambition of authorship. But he wished to be admired as a philosopher and a divine. In 1673, he had printed an "Essay touching the Gravitation and Non-gravitation of Fluid Bodies;" and, two years after, a treatise entitled "DIFFICILES NUGÆ; or, Observations touching the Torricellian Experiment, and the various Solutions of the same, especially touching the Weight and Elasticity of the Air." There had likewise been published, with his sanction, while he was on the bench, two volumes of "CONTEMPLATIONS," consisting of sermons, homilies, or pious ruminations, written by him on the evenings of the Lord's day. Now he sent to the press the first volume of a work on which he had been engaged for seven years, entitled "THE ORIGINATION OF MANKIND." His object was to refute atheists, and to support the Mosaic account of the creation. But before it was published he was beyond the reach of human praise or censure:

His philosophical publications.

"The Origination of Mankind."

"As the winter came on, he saw with great joy his deliverance approaching; for besides his being weary of the world,

progress in acquiring the lingo of the county. The Judge's name is there pronounced Eel, as they never aspirate *h* at the beginning of a word, and they always change *a* into *ee*. Thus Mr. Bloxham, the clerk of the peace, born near Alderley, in calling the jury, when he came to "David Hale of the same place, baker," hollaed out, "Deevid Eeel, of the seem pleece, beeker." I hope it is understood that I praise these verses of a Gloucestershire poet only in comparison with his other metrical effusions.

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and his longings for the blessedness of another state, his pains increased so on him, that no patience inferior to his could have borne them without a great uneasiness of mind; yet he expressed to the last such submission to the will of God, and so equal a temper under them, that it was visible then what mighty effects his philosophy and Christianity had on him in supporting him under such a heavy load. Not long before his death the minister told him 'there was to be a sacrament next Sunday at church, but he believed he could not come and partake with the rest; therefore he would give it to him in his own house.' But he answered, 'No, his Heavenly Father had prepared a feast for him, and he would go to his Father's house to partake of it.' So he made himself be carried thither in his chair, where he received the sacrament on his knees with great devotion; which, it may be supposed, was the greater because he apprehended it was to be his last, and so took it as his *viaticum* and provision for his journey."[1]

His last communion.

Such was his reputation for sanctity, that some expected that he would be translated to a better world without tasting death. He knew well that he could only attain to perfect blessedness through the resurrection of the just, but even he believed that the time of his death was mysteriously revealed to him, for in the middle of November he declared that "if he did not die next Friday week, he should live a month longer." The day he named fell out to be the 25th of November; he did not die on that day, although grievously sick, and he languished on till the morning of the 25th of December, Christmas day, when, as it was supposed, by the special favor of Heaven, to recompense him for the war he had carried on against evil spirits, he expired at cockcrow:

His death.

> "Then, they say, no spirit dares stir abroad;
> No fairy takes, nor witch hath power to charm,—
> So hallow'd and so gracious is the time."

He continued to enjoy the free use of his reason to the last moment, a blessing which he had often earnestly prayed for during his sickness; and when

1. Burnet, p. 35.

MATTHEW HALE.

From a Picture in Lincoln's Inn Library.

his voice was so sunk that he could not be heard, those who stood by might perceive, by the almost constant lifting up of his eyes and hands, that he was still aspiring towards that blessed state of which he was speedily to be possessed.

His funeral.

He used to disapprove of the custom of burying in churches as superstitious, saying, "Churches are for the living, churchyards for the dead." Accordingly, on his last return from London, he had pointed out a spot for his own interment, near the grave of his deceased wife; and there his remains were deposited on the 4th day of January following. The intention was that the ceremony should be very private, but, in addition to his own relatives and servants, many rustics attended from the surrounding villages, for they regarded the deceased as a Saint, and they thought there was virtue in touching his coffin. In Popish times, miracles would have been worked at his tomb, and he would have been canonized as "St. Matthew of Alderley."

His funeral sermon.

The only ecclesiastical honor conferred upon him was a funeral sermon, by the vicar of Alderley, from Isaiah, lvii. 1. "The righteous perisheth, and no man layeth it to heart: and merciful men are taken away, none considering that the righteous is taken away from the evil to come,"—in which the preacher drew a glowing picture of the virtues of the departed Chief Justice, and expressed a pious confidence "that, now beyond the temptations and troubles of this wicked world, in which the Devil and his angels are constantly plotting destruction to the bodies and souls of men, having a powerful Advocate on his side, he might with pious confidence attend the last assize, and expect a sentence of acquittal from the great and merciful Judge of mankind."

Sir Matthew himself had prepared the following

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simple epitaph, which was inscribed on a plain marble monument erected to his memory:

His epitaph.

"HIC INHUMATUR CORPUS
MATTHEI HALE, MILITIS;
ROBERTI HALE ET JOANNÆ
UXORIS EJUS FILII UNICI,
NATI IN HOC PAROCHIA DE ALDERLEY
PRIMO DIE NOVEMBRIS,
A.D. 1609.
DENATI VERO IBIDEM
VICESIMO QUINTO DIE DECEMBRIS,
A.D. 1676.
ÆTATIS SUÆ LXVII."[1]

In the list of our great magistrates there is no name more venerated than Hale, and I can add nothing to exalt his judicial reputation.

He mixed so little in politics, that he is hardly to be enumerated among our statesmen; but in revolutionary times he must be allowed to have acted a moderate, consistent, and meritorious part.

Hale as a jurist.

As a jurist, I doubt whether sufficient justice has yet been done to his memory. Coke had as much professional knowledge, but he considered what he had amassed as a mere *congeries* of arbitrary rules, without principle, system, or dependence. Hale cultivated law as a science,—having distinct objects to which it might or might not be adapted,—admitting and requiring alterations and amendments, according to the varying circumstances of society. He had a fine head for analysis, and, with a due reverence for existing institutions, he recollected the maxim, that "Time is the greatest innovator." Hence he beautifully methodized the code which he found to be in force, and he gave invaluable instructions as to the manner in which it might be improved. We have from Bishop Burnet the following interesting account

1. "Here lies buried the body of Matthew Hale, Knight; only son of Robert Hale and Joanna his wife; born in this parish of Alderley on the first day of November, A.D. 1609. Died in the same place on the 25th day of December, A.D. 1676. Aged 67."

of his first attempt in this direction, which shows that the subject had long occupied his thoughts: CHAP. XVIII.

Burnet's account of Hale's first attempt to methodize the code.

"Some complaining to him that 'they looked on the common law as a study that could not be brought into a scheme, nor formed into a rational science, by reason of the indigestedness of it, and the multiplicity of the cases in it which rendered it very hard to be understood;' he said, 'he was not of their mind,' and so, quickly after, he drew with his own hand a scheme of the whole order and parts of it in a large sheet of paper, to the great satisfaction of those to whom he sent it. Upon this hint some pressed him to compile a body of the English law. But he said, 'as it was a great and noble design which would be of vast advantage to the nation, so it was too much for a private man to undertake; it was not to be entered upon but by the command of a prince, and with the communicated endeavors of some of the most eminent of the profession.'"[1]

Hale's Analysis and Tract on this subject.

He actually did publish an "Analysis of the Civil part of our Law," which supplied Sir William Blackstone with the plan of his immortal COMMENTARIES.[2] He likewise left behind him a Tract entitled "Considerations touching the Amendment of the Law,"—to be studied by all law reformers, and by all who think that the law should remain unchanged from generation to generation. Having first pointed out the evils arising from "overhaste and forwardness," he proceeds to remark on "the over-tenacious holding of laws, notwithstanding apparent necessity for, and safety in, the change:"

His remarks on "the over-tenacious holding of laws."

"We must remember," says he, "that laws were not made for their own sakes, but for the sake of those who were to be guided by them; and though it is true that they are and ought to be sacred, yet if they be or are become unuseful for their end, they must either be amended, if it may be, or new laws be

1. Burnet, p. 39.

2. Pronounced by Hargrave "a superstructure raised on the foundation of Lord Hale's previous Digest." (Preface to Law Tracts, xii.)

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substituted, and the old repealed, so it be done regularly, deliberately, and so far forth only as the exigence or convenience justly demands it; and in this respect the saying is true, *Salus populi suprema lex esto.*[1] He that thinks a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago, may as well imagine that the clothes that fitted him when a child should serve him when he was grown a man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies, change in a long tract of time, and so must their laws in some measure be changed, or they will not be useful for their state and condition; and besides all this, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, secure new advantages and discoveries by time and experience, so much more do laws which concern the manners and customs of men." [2]

Upon these admirable principles he proceeded when at the head of the Commission for the Amendment of the Law under Cromwell; and on his suggestions chiefly are founded the ameliorations of our code which have illustrated the reigns of William IV. and Queen Victoria. We have not yet a Register of Deeds, but this is not the fault of Hale, for he wrote a book on purpose to recommend it,—in which he triumphantly shows the objection which prevents its adoption—that it would disclose the incumbrances with which estates are charged—to be one of its greatest advantages.

His book to recommend a Register of Deeds.

His judicial writings.

Having completed his "Commonplace Book," he, in the early part of his career, wrote many separate law treatises. The one upon which he bestowed most labor, and which has been most frequently quoted, is his "HISTORY OF THE PLEAS OF THE CROWN," which

1. "The safety of the people shall be the first law."
2. Published by Hargrave in his Law Tracts.

is a complete digest of the criminal law as it existed in his day. His "HISTORY OF THE COMMON LAW OF ENGLAND" may be considered a sketch of what might have been expanded into a complete Civil Code. All his MSS. and records he left by his will to the library of Lincoln's Inn, pronouncing them "a rare collection, —a treasure worth having and keeping,—and not fit for every man's view." From this repository the late Mr. Hargrave published, to the great benefit of the community, two very valuable Tracts by Hale,—"DE PORTUBUS MARIS," and "ON THE JURISDICTION OF THE LORDS' HOUSE OF PARLIAMENT,"—both of which show a familiarity with our legal antiquities, and powers of distribution and illustration, worthy of the highest admiration.

His two published Tracts.

But he only valued himself for his success in poetry,—in philosophy,—and in divinity; and such is the weakness of human nature, that he evidently thought he had secured to himself a lasting reputation in these departments of genius and learning.[1] A collection of hymns, written by him, was published; and Bishop Burnet, who says "he had great vivacity in his fancy, as may appear from his inclination to poetry," praises a Christmas Carol, which thus begins:

1. Roger North says, "It is most certain his vanity was excessive; which grew out of a self-conversation, and being little abroad. But when he was off from the seat of justice and at home, his conversation was with none but flatterers. He was allowed on all hands to be the most profound lawyer of his time; and he knew it; but that did not serve him, but he would be also a profound philosopher, naturalist, poet, and divine, and measured his abilities in all these by the scale of his learning in the law, which he knew how to value; and if he postponed any, it was the law to all the rest; for he was so bizarre in his dispositions that he almost suppressed his collections and writings of the law, which were a treasure, and, being published, would have been a monument of him beyond the power of marble." (i. 115.) But Roger confesses that he was influenced by his brother's envy of Hale: "He was very much concerned to see the generality, both gentle and simple, lawyers and laymen, idolize him, as if there had never been such a miracle of justice since Adam." (i. 119.)

CHAP. XVIII. Specimen of his poetry commended by Burnet.

"Blessed Creator! who before the birth
Of time, or e'er the pillars of the earth
Were fixt or form'd, didst lay that great design
Of man's redemption, and didst define
In thine eternal councils all the scene
Of that stupendous business, and when
It shall appear, and though the very day
Of its epiphany concealéd lay
Within thy mind, yet thou wert pleas'd to show
Some glimpses of it unto men below."[1]

His doctrines respecting the maintenance of the poor.

While living in retirement, shortly before the Restoration, he wrote a pamphlet on the "Maintenance of the Poor," in which, in entire ignorance of the elements of political economy, and amiably led away by *communist* doctrines, he proposes that in every parish there should be an association of operatives, who, being supplied with materials, should carry on some manufacture for their common benefit. Refusal to work he would punish, upon a conviction before magistrates; but he is as silent as Louis Blanc, in our day, with respect to the necessary stimulus to exertion where the listless and the laborious were to share equally; and he says not a word about the requisite supply of capital, or the demand for his manufactured produce.[2]

His experiments in natural philosophy.

In his latter years he was smitten by the rage for philosophical discovery which prevailed among the founders of the Royal Society. At Acton he had a laboratory, and he engaged in long courses of chemical experiments. The result of these he from time to time gave to the world, in pamphlets, which called forth eulogies from sycophants who surrounded him, but made the judicious grieve. His book on "THE ORIGINATION OF MANKIND" has the merit of contain-

1. I must admit that this rather justifies Roger North's criticism: "He published much in speculative devotion, part prose, part verse; and the latter hobbled so near the style of the other as to be distinguished chiefly by being worse."

2. See an analysis of this pamphlet in Sir Frederick Morton Eden's History of the Poor Laws, i. 214.

ing the refutation of atheism from the mechanism of a watch, of which Paley has availed himself. After supposing one to have been presented in an assembly of Greek philosophers, and giving their various unsatisfactory explanations of its structure and movements, he finally introduces the maker, and puts this speech into his mouth: CHAP. XVIII.

His refutation of atheism from the mechanism of a watch.

"Gentlemen, you have discovered very much excellency of invention touching this piece of work that is before you, but you are all miserably mistaken; for it was I that made this watch and brought it hither, and I will show you how I made it. I wrought the spring, and the fasce, and the wheels, and the ballance, and the case, and table; I fitted them one to another, and placed these several axes that are to direct the motions of the index to discover the hour of the day, of the figure that discovers the phases of the moon, and the other various motions that you see."

But his speculations about the manner in which the heavens and the earth were created, and his geological explanation of the effects of Noah's flood, are by no means edifying.[1] His "CONTEMPLATIONS," and other devotional writings, have passed through many editions, and, I doubt not, have done much good; but I believe that they acquired their celebrity from being the productions of a lawyer of high station, and that if they had come from an ecclesiastic, whether Churchman or Dissenter, they would have attracted little notice. Even Burnet says "they are not so contracted as it is very likely he would have writ them if he had been more at leisure to have brought his thoughts into a narrower compass and fewer words."

Character of his devotional writings.

Of all his writings the most popular are his "LETTERS OF ADVICE TO HIS SONS AND HIS GRANDCHILDREN." They are certainly very moral, and may be

His Letters of Advice to his children and grandchildren.

1. This publication seems to have had no success. Roger North says that it is "very remarkable for a childish ignorance of the subject, and that scarce any one ever read or will read it."

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perused with much advantage; but I must admit that they are very dull and unattractive, and the fashion of using them as a text-book for domestic education, I am sorry to say, has made the hero of this memoir to be regarded as a *great bore* by the rising generation. Thus he addresses his granddaughter *Anne*, whom he describes as "of a sanguine but melancholy complexion," and his granddaughters *Mary* and *Frances*, who were, it seems, "of a sanguine and choleric complexion:"

His notions of female education.

"I would have you learn all points of good housewifery, and practise it as there shall be occasion; as spinning of linen, the ordering of dairies, and to see to the dressing of meal, salting and dressing of meat, brewing and baking, and to understand the common prices of corn, meat, malt, wool, butter, cheese, and all other household provisions; and to see and know what stores of all things necessary for the house are in readiness, what and when more are to be provided; to have the price of linen, cloths, stuffs, and woollen cloth for your necessary use and the use of a family; to cast about to provide all things at the best hand; to take and keep account of all things; to know the condition of your poultry about the house, for it is no discredit to a woman to be a hen-housewife; to cast about how to order your clothes with the most frugality, to mend them when they want, and to buy but when it is necessary, and with ready money; to love to keep at home. A good wife is a portion of herself, but an idle or expensive wife is most times an ill bargain, though she bring a great portion."[1]

Burnet says, "he neglected the study of the tongues;" he tells that he had entirely forgotten his Greek, and I presume that he avoided all dramatic writings in English as profane; but it is wonderful that his familiar acquaintance with the authorized translation of the Bible (that well of English undefiled)

1. Hannah More, in her "Hints towards the Character of a Princess," recommends "the occasionally committing to memory a rule of conduct from Sir Matthew Hale." I do not know whether she had the above admonition in her eye.

did not make his style more nervous and more harmonious. As a writer, however, he pleased the late Lord Ellenborough, who said "he was as competent to express as he was able to conceive."[1]

His religion tinged with superstition.

Above all, he was reverenced in his own time, and has been so ever since, for the example he set of spotless purity and of genuine piety, although it must be confessed that in his ascetic life he fled from social duties, and that he was not entirely free from superstition. He gravely narrates that he was led to the strict observance of the Sabbath day because, once profaning it by riding a journey, his horse was supernaturally lamed;[2] and he always retained his puritanical dislike to changes of posture during divine service, and even to bowing at the name of Jesus.[3]

His dress.

He was likewise coxcombical in his own way. "His habit," says Baxter, "was so coarse and plain, that I, who am thought guilty of a culpable neglect therein, have been bold to desire him to lay aside some things which seemed too homely."[4] Then, although he would have no visiting intercourse with the great and the learned, he invited his poorest

1. 5 East, 17.

2. Baxter, in his Preface to "Gouge's Surest and Safest Way of Thriving," 8vo, 1676, says, "The Lord Hale hath told me how the strange providences of God, in laming and disabling his horses, and other impeditions in a journey towards London for worldly advantages, did convince him and engage him ever after to spend the day as he hath done."

3. Baxter says, "His behavior in the church was *conformable* but *prudent*," and describes his innocent contrivances to satisfy his conscience without violating the Rubric. (Relig. Baxter, part iii. p. 181.) Although we must regret that he was so narrow-minded on such points, it is creditable to him that he did not—like most Dissenters who, on their rising in the world, have *conformed*—go over furiously to the high-Church party, and persecute his former co-religionists.

4. Unconscious that he himself tried to attract notice and gain distinction by peculiarity of dress, he rebuked any symptoms of this passion in others. He was particularly severe on attorneys who wore swords; and he expressed high displeasure at the young barristers who wore periwigs, which were then beginning to be fashionable,—*apprentices* having hitherto appeared in their natural long locks, and *sergeants* being adorned with the *coif* or black velvet nightcap. Burnet, p. 52.

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neighbors to dinner, and made them sit at his own table. He thus rendered his house very disagreeable to his children, who might have turned out well if better society and suitable amusements had been provided for them at home. "All his sons died in the sink of lewdness and debauchery; and if he was to blame in their education, it was by too much rigor rather than of liberty."[1]

His children.

His disregard of money.

His style of living by no means proceeded from an avaricious or miserly disposition. "He did not take the profits that he might have had by his practice, for in common cases, when those who came to ask his counsel gave him a piece, he used to give back the half, and to make ten shillings his fee in ordinary matters that did not require much time or study."[2] He often acted as an arbitrator, but would never accept any fee for his pains,—saying, "In these cases I am made a judge, and a judge ought to take no money." If they told him that he lost much of his time in considering their business, and so ought to be acknowledged for it, he asked "Can I spend my time better than to make people friends? Must I have no time allowed me to do good in?" He regularly set apart a tenth part of his gains for the poor, and laid out large sums in charity besides. Accordingly, notwithstanding his extensive business at the bar, and long tenure of office, the whole increase of his estate was from 100*l.* to 900*l.* a year, and this arose chiefly from a large legacy left to him by his friend Selden.[3]

1. North's Life of Guilford, i. 117.

2. At this time the client consulted the barrister in person, and paid him the *honorarium* without the intervention of attorney or clerk.

3. He showed his disinterestedness as one of the executors of this extraordinary man, who had, by his will, left his noble library of 8,000 volumes and many costly MSS. to the University of Oxford, but, taking offence with that learned body because he was refused the loan of a book without giving security for it, had, by a codicil, left the whole to his executors. The executors, thinking this a mere temporary ebullition of

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His biographers add a proof of his extreme scrupulousness, which gives us a strange notion of the times in which such conduct was thought to deserve special praise. "Another remarkable instance," says a bishop, who has not the arrogance to say he imitated him, "of his justice and goodness was, that when he found ill money had been put into his hands, he would never suffer it to be vented again, for he thought it was no excuse for him to put false money in other people's hands because some had put it into his. A great heap of this he had gathered together, for many had so abused his goodness as to mix base money among the fees that were given him." [1]

Notions in the reign of Charles II. about knowingly passing bad money.

Sir Matthew Hale was a handsome man, with a strong constitution, which he preserved by short meals and always rising from table with an appetite. I suspect, however, that he indulged to great excess in the use of tobacco, under pretence that, from some peculiarity of constitution, it was necessary to him. Having exhorted his grandchildren to shun this pernicious plant, he says to them, "Herein your grandfather's practice must not be an example to you, nor to any else that is not of his complexion, government, and prudent ordering of himself; for your grandfather hath ever been of a cold complexion and constitution, and therefore tobacco hath been his physic, and a great preservative of his health. But your constitutions are hot, dry, and choleric, and it is hurtful for you." [2]

Hale's constitution and habits.

His first wife was a daughter of Sir Henry Moore, of Faly, in Berkshire. By her he had ten children, all

His two wives.

spleen, carried into effect the original design.—Ath. Ox. i. pp. xxxvii, xxxviii.

1. This hoard was at last seized by thieves, who broke into his house, and thought they had gained a great prize. They probably did not scruple to circulate it, as it had belonged to a Saint.

2. Page 159

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of whom he outlived except his eldest daughter and his youngest son. When pretty far advanced in life, having been some time a widower, he married the daughter of Mr. Joseph Bishop, of Faly, by whom he had no issue. Roger North says that "she was his own servant-maid, and that, for excuse, he said 'There is no wisdom below the girdle.'"[1] Baxter charitably observes, "Some made it a scandal; but his wisdom chose it for his convenience, that in his age he married a woman of no estate, suitable to his disposition, to be to him as a nurse. This good man more regarded his own daily comfort than man's thoughts and talk."[2] The arrangement turned out well, and he speaks affectionately and respectfully of her, both in his will and in his advice to his grandchildren,—whom he committed to her care.

His representatives.

The estate of Alderley is still in the possession of a lineal descendant of Sir Matthew Hale. I remember that this gentleman served the office of High Sheriff for the county of Gloucester when I went the Oxford Circuit, and that he was treated with peculiar respect by the Judges and the bar, from our profound veneration for the memory of his illustrious ancestor.

In writing this memoir, it has been painful to me, in the impartial discharge of my duty, to impute a few errors and defects to him whose infallibility and absolute perfection are considered by many to be essential to the cause of true religion; but I have pleasure in concluding with a sketch of his character drawn by one who was intimately acquainted with him for many years, and who may be confidently relied upon both for discernment and sincerity. Richard Baxter, with a small pecuniary legacy left him as a token of regard by his old friend, purchased a copy of the great Cam-

1. Life of North, p. 116.
2. Relig. Baxter, part iii. p. 176.

bridge Bible, and prefixed to it a print of the Judge, with the following encomium: CHAP. XVIII.

Sketch of his character by Baxter.

"Sir Matthew Hale, that unwearied student, that prudent man, that solid philosopher, that famous lawyer, that pillar and basis of justice—(who would not have done an unjust act for any worldly price or motive),—the ornament of his Majesty's government, and honor of England, the highest faculty of the soul of Westminster Hall, and pattern to all the reverend and honorable Judges; that goodly, serious, practical Christian, the lover of goodness and all good men; a lamenter of the clergy's selfishness, and unfaithfulness, and discord, and the sad divisions following hereupon; an earnest desirer of their reformation, concord, and the Church's peace, and of a reformed Act of Uniformity as the best and necessary means thereto; that greater contemner of the riches, pomp, and vanity of the world; that pattern of honest plainness and humility, who, while he fled from the honors that pursued him, was yet Lord Chief Justice of the King's Bench, after his long being Lord Chief Baron of the Exchequer; living and dying, entering on, using, and voluntarily surrounding his place of judicature with the most universal love, and honor, and praise, that ever did English subject in this age, or any that just history doth record."

CHAPTER XIX.

CHIEF JUSTICES FROM THE RESIGNATION OF SIR MATTHEW HALE TILL THE APPOINTMENT OF JEFFREYS.

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State of the times. A.D. 1676.

On the resignation of Sir Matthew Hale the times were yet tolerably quiet, and, there being no Government job to be done in the Court of King's Bench, a disposition existed to appoint a respectable man to succeed him; but a great penury of learning and ability was discovered in looking to those, either at the bar or on the bench, whose fitness was canvassed, and, at last, Lord Nottingham,[1] who now held the Great Seal, decided that he could not do better than promote Sir Richard Raynsford, a Puisne Judge of this court, to be Chief Justice. He was a man of good family, fair estate, decent character, and agreeable manners, with a sufficient portion of understanding and learning to keep him above contempt.

Sir Richard Raynsford.

His early career.

Descended from the Raynsfords of Raynsford, in the county of Lancaster, he was of a branch of the family settled at Dullington, in Northamptonshire. He began life as a younger brother, and was bred to the bar at Lincoln's Inn. His relations were strong Cavaliers, and he himself entertained, in his heart, a thorough hatred of Roundheads; but, entering upon his professional career when the parliament had gained a complete ascendency over the King,

1. Heneage Finch, the first Earl of Nottingham, was a lawyer and politician. He was educated at Westminster School and Christchurch, Oxford, and was called to the bar in 1645. In 1673 he was made Lord Keeper of the Seal. Blackstone describes him as "a person of the greatest abilities and most uncorrupted integrity, a thorough master and zealous defender of the laws and constitution of his country."—*Beeton's Biog. Dict.*

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he deemed it more prudent to submit to the ruling powers, and in 1653 he was chosen Deputy Recorder of Northampton; but he neither obtained nor sought any farther preferment till the Restoration. By the death of his elder brother he obtained possession of the patrimonial property, reckoned worth 600*l.* a year, and he was to have been made one of the "KNIGHTS OF THE ROYAL OAK" if that order, which was in contemplation, had been established. Although he represented the county of Northampton in the Convention Parliament and that which followed, and he was looked upon rather as a country squire than a lawyer, he had a liking for the profession, and he continued to attend the courts and to go the circuit. In 1663 he was made a Baron of the Exchequer, and for six years he sat, almost dumb, listening to profound elucidations of the law from the lips of Lord Chief Baron Hale. It was then convenient that he should be transferred to the King's Bench,[1] where he still maintained his reputation for good sense and discretion. No one having dreamed of his going higher, the news of his appointment as Chief Justice of England caused considerable surprise; but, on account of his inoffensiveness and gentlemanlike deportment, there was a general inclination to support him and to speak well of him.

Nov. 16, 1663. He is made a Baron of the Exchequer.

Feb. 6, 1669. A Puisne Judge of the King's Bench.

Chief Justice. April 12, 1676.

He held his office two years,—till the Popish Plot[2] A.D. 1676–1678.

1. 2 Keble, 469. On this occasion he took precedence of a King's Bench Puisne who had been made a judge after him: "Et donque sans autre ceremony, il seu sure le ba. supra Morton, quia, il fust Baron devenant que Morton fust fait Justice."—1 *Sid.* 408.

2. The Popish Plot was the name given to an imaginary conspiracy of the Catholics in the reign of Charles II. Though, no doubt, there were some projects for an attempt against the Government agitated by the English Catholics, there is little doubt that the "plot" owed its existence chiefly to the imagination of Titus Oates and other informers. Oates was an English clergyman of bad character, who had become a Roman Catholic, and joined the Jesuits at St. Omer. In 1678 he deposed before a magistrate that he knew the particulars of a papist scheme, by which

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broke out, and the Government deemed it necessary to substitute for him a tool better fashioned for doing the horrid work then on hand to their mind—SIR WILLIAM SCROGGS; who, next to JEFFREYS,—and at a very short distance from him,—is considered the most infamous judge who ever sat on the English bench.

He decides the great case of privilege on the commitment of Lord Shaftesbury.

During Lord Chief Justice Raynsford's time, one case of great public interest arose, and this he disposed of very satisfactorily. The famous Earl of Shaftesbury—having been sent to the Tower by the House of Peers, under a warrant which merely stated that it was "for high contempts committed against this House," without specifying what the offence was—sought to be discharged by a writ of *habeas corpus*,

the King was to be killed, a Roman Catholic ministry appointed, and a massacre of the Protestants prepared with the assistance of a French army. A few days afterwards Sir Edmondbury Godfrey, the magistrate before whom Oates had sworn, was found murdered on Primrose Hill, and a universal panic spread over the nation, which seemed for the time to have lost its senses. The wildest stories of Oates and the informers who arose were believed without question. Parliament met on Oct. 21, and the Commons resolved, "that there hath been, and still is, a damnable and hellish plot, carried on by papist recusants for assassinating the King, the subverting the Government, and for rooting out the Protestant religion." The plot was taken up by Shaftesbury as a weapon against his political opponents and the Duke of York. On the evidence of Oates, Dangerfield, Carstairs, and Bedloe, many leading Roman Catholics were tried, convicted, and imprisoned or executed, and Oates went so far as to swear that he had heard the Queen give her consent to the King's murder. On Nov. 30 an act was passed "for disabling papists from sitting in either Houses of Parliament." In March of the following year (1679) the bill to exclude the Duke of York from the throne was brought in, and though Charles deferred it for that year by a dissolution, it was carried through the Commons in November, 1680, and rejected in the House of Lords. In December, 1680, Lord Stafford, the most distinguished of the victims of the Popish Plot, was executed. But by this time a reaction had set in. The judges would no longer convict on the evidence of the informers, and the people were alienated by what seemed like a Whig persecution of the Duke of York. In March, 1681, Charles dissolved his fifth Parliament, and governed without one during the remainder of his reign; and later in the year one of the false witnesses, College, was put on his trial, and condemned at Oxford, and Shaftesbury himself was prosecuted by the Crown for treason, though the bill was thrown out by the grand jury in London.—*Low and Pulling's Dict. of Eng. Hist.*

returnable in the King's Bench,—on the ground that the warrant was illegal; and he and his counsel argued very plausibly that every freeman was entitled to know the charge on which he was deprived of his liberty, and that what the Lords construed as a high contempt might, in reality, be an act perfectly innocent, or such as it was the duty of the party imprisoned to do under the obligation of a statute or of the common law. CHAP. XIX.

At this time Shaftesbury was highly obnoxious to Danby,[1] the Prime Minister, who earnestly desired to detain his rival in custody; otherwise, no one can tell how the point of privilege would have been settled. We are bound, however, to suppose that all the Judges of the Court looked only to the just principles on which parliamentary privilege is founded, and to Chief Justice Newdigate's decision in Sir Robert Pye's case during the Commonwealth.

His ruling

Raynsford, C. J.: "This Court has no jurisdiction of the cause, and therefore we cannot take into consideration the form of the return. We ought not to extend our jurisdiction beyond its due limits, and the practice of our ancestors will not warrant us in such an attempt. The consequence would be very mischievous if this Court should deliver a member of the House of Peers or Commons, committed for contempt, for thereby the public business may be retarded; for it may be the commitment was for evil behavior or indecent reflections on other members, to the disturbance of the affairs of Parliament. The commitment in this case is not for safe custody, but in execution of the judgment given by the Lords for the contempt; and, therefore, if he were bailed he would be delivered out of execution. For a contempt *in facie curiæ*[2] there is no other judgment. This Court has no jurisdiction, and therefore the prisoner must be remanded."[3]

So he lay in custody till he was obliged to make

1. Thomas Osborne, Duke of Leeds, best known as Earl Danby, was minister to Charles II., and played an important part in the revolution of 1688.—*Green's History of the Eng. People,* vol. iii. p. 393.

2. "In the presence of the court." 3. 6 St. Tr. 1171.

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an abject apology to obtain his liberation, and he seemed for ever ruined as a public man—when the Popish Plot suddenly made him more popular and more powerful than ever.

He is removed from his office.

The shadow of this coming event was the signal for the dismission of Sir Richard Raynsford—the first instance of such an exercise of the prerogative during the present reign.[1] Although there had been before him four Chief Justices of the King's Bench appointed by Charles II. in rapid succession, the first three had died in office, and the fourth had voluntarily resigned. Raynsford was very unwilling to retire, but, being plainly told that this step was necessary for the King's service, he at last quietly submitted, and, as he had no quarrel with the Government, the act of cashiering him was carried through with all becoming delicacy.

May, 1678.

He retired to his country-house at Dullington, and —having founded almshouses there for the good of his soul, to maintain old men and old women, with an allowance of *2s.* weekly to each—he died on the 17th of December, 1679, in the 75th year of his age. A monument was erected to his memory in the parish church, with an inscription from which it might be supposed that he was a greater Chief Justice than Coke, Hale, Holt, or Mansfield. I will give a short specimen of it:

His death. Dec. 17, 1679.

His epitaph.

"Richardi Raynsford Militis
Nuper de Banco Regis Capitalis Justiciarii, etc.
Eximii sui seculi decus,
Quem non cœca sors, at spectata virtus,
Ad illos quos ornavit honores evexit,
Quem summa in Deum pietas, in patriam charitas,
In Regem, in ecclesiam, inconcussa fides,
In jure dicendo erudita probitas,
Asylum bonis, flagellum malis," etc., etc.[2]

1. "T. T. 3 Car. II., Mundum. This term Sir Richard Raynsford was removed, and Sir William Scroggs, one of the Justices of the Common Pleas, was made Lord Chief Justice of the King's Bench." (1 *Vent.* 329.)

2. ["To the memory of Richard Raynsford, Knight, lately Chief Jus-

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Contrast between Raynsford and his successor, Scroggs.

Never was there a more striking contrast than between Chief Justice Raynsford and his immediate successor. SCROGGS[1] had excellent natural abilities, and might have made a great figure in his profession; but was profligate in his habits, brutal in his manners, with only one rule to guide him—a regard to what he considered his own interest,—without a touch of humanity,—wholly impenetrable to remorse.

Story that Scroggs was the son of a butcher.

It was positively asserted in his lifetime, and it has been often repeated since, that he was the son of a butcher, and that he was so cruel as a judge because he had been himself accustomed to kill calves and lambs when he was a boy.

A popular ballad, published at the time when he

tice of the King's Bench, etc. He was an ornament to his generation, one whom not chance, but high character and worth, led forth to those honors which he adorned; he was religious, patriotic, loyal to his King and the Church, learned in the law, and upright in performing his duty; a refuge for the good, a lash for the wicked," etc.]—Bridges' Northampton, i. 495.

1. The last four of the Chief Justices of the King's Bench in the reign of Charles II.—Scroggs, Pemberton, Saunders, and Jeffreys—may be cited as remarkable proofs of the general profligacy of the period, each having been elevated to his high position notwithstanding the notorious looseness of his early life. The obloquy which is attached to the name of Scroggs may serve as a warning to every man to avoid obsequiousness to those from whom favor flows. An apostate, from party spirit, ambition, or personal interest, to principles he had once strongly advocated, will ever be repudiated by both parties and defended by neither. If there are any good points in his character they will be misconstrued or misrepresented; and if there is the least blot in his escutcheon he will be sure to have

> "all his faults observed,
> Set in a note-book, learn'd and conned by rote,
> To cast into his teeth."

Such was the fate of Sir William Scroggs, whose extravagant zeal for each of the contending parties, as he supposed one or the other to be in the ascendant, led to the usual consequence—his fall between both; his name being blackened so universally that scarcely any writer shows the slightest tenderness to his memory, except Anthony Wood in his "Athenæ Oxonienses" (iv. 115). Even his lineage does not escape calumny, and his reputed low birth, which in the height of his popularity would be mentioned to his credit, is blazoned as an addition to his disgrace when the tables are turned.—*Foss's Lives of the Judges.*

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was pouring forth innocent blood like water, contained these stanzas:

Contemporary ballad to this effect.

"A butcher's son's Judge Capital,
Poor Protestants to inthrall,
And England to enslave, sirs;
Lose both our laws and lives we must,
When to do justice we intrust
So known an arrant knave, sirs.

"His father once exempted was
Out of all juries; why? because
He was a man of blood, sirs.
And why the butcherly son (forsooth!)
Should now be judge and jury both,
Cannot be understood, sirs.

"The good old man, with knife and knocks,
Made harmless sheep and stubborn ox
Stoop to him in his fury;
But the bribed son, like greasy oaph,
Kneels down and worships golden calf,
And massacres the jury."[1]

Prose authorities.

There are many grave prose authorities to the same effect. Roger North,[2] who must have known him familiarly for many years, and highly approved of his principles, says, "This Sir William Scroggs was of a mean extract, having been a butcher's son;"[3] and Sir William Dugdale, supposed to be the most accurate of genealogists, being not only a man of profound antiquarian learning, but at the head of heraldry as GARTER KING AT ARMS,[4] wrote, in answer to inquiries

1. This metrical broadside is entitled "Justice in Masquerade."

2. Roger North, a younger son of Lord Dudley North, and a brother of Sir Dudley North, was born about 1650. He studied law, and became steward of the courts to Archbishop Sheldon. He was author of several works, the most important of which is "The Lives of Francis North, Lord Keeper of the Great Seal, Sir Dudley North, and Rev. John North" (1740–42). This is written in an affected, pedantic style, but contains valuable matter. Died in 1733.—*Thomas' Biog. Dict.*

3. Life of North, i. p. 296.

4. The Order of the Garter is the highest British order of knighthood, and one of the oldest and most illustrious of the military orders of knighthood in Europe. Most writers agree that its institution dates from a tournament at Windsor, held April 23, 1344, to which Edward invited the most illustrious knights. It was founded in honor of the Trinity, the Virgin Mary, and St. Edward the Confessor; and St. George, who was already the tutelar saint of England, was considered its especial patron and protector.—*Appl. Encyc.*, vol. vii. p. 631.

ROGER NORTH.

After Sir Peter Lely.

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on the subject from Wood, the author of the ATHENÆ, "Sir William Scroggs was the son of a one-eyed butcher near Smithfield Bars; and his mother was a big fat woman, with a red nose like an alewife."[1]

Scroggs's true parentage.

Yet it is quite certain that the usual solution of Scroggs's taste for blood is a pure fiction, for he was born and bred a gentleman. Some said, jocularly, that he was descended from the ancient Welsh family *Kilmaddocks* of *Kilmaddocks*,[2] but, in truth, his father was a squire, of respectable family and good estate, in Oxfordshire. Young Scroggs was several years at a grammar-school, and he took a degree with some credit in the University of Oxford, having studied first at Oriel, and then at Pembroke, College. He was intended for the Church, and, in quiet times, might have died respected as a painstaking curate, or as Archbishop of Canterbury. But, the civil war breaking out while he was still under age, he enlisted in the King's cause, and afterwards commanded a troop of horse, which did good service in several severe skirmishes. Unfortunately, his morals did not escape the taint which distinguished both men and officers on the Cavalier side.

A.D. 1639—1643.

He carries arms as a Cavalier.

The dissolute habits he had contracted unfitted him entirely for the ecclesiastical profession, and he was advised to try his luck in the law. He had a quick conception, a bold manner, and an enterprising mind; and prophecies were uttered of his great success if he should exchange the cuirass for the long robe. He was entered as a student at Gray's Inn, and he showed that he was capable, by short fits, of keen application; but his love of profligacy and of expense

He studies law.

1. Athenæ, vol. iv. p. 117. Wood cautions his readers against giving implicit credit to this statement, as Dugdale had a spite against Scroggs, who had refused to pay certain fees to the College of Arms, which had been demanded of him when he was made a knight.

2. Kill—mad—ox.

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still continued, and both his health and his finances suffered accordingly.

However, he contrived to be called to the bar; and some of his pot companions being attorneys, they occasionally employed him in causes likely to be won by a loud voice and an unscrupulous appeal to the prejudices of the jury. He practised in the King's Bench, where, although he now and then made a splashy speech, his business by no means increased in the same ratio as his debts. "He was," says Roger North, "a great voluptuary, his debaucheries egregious, and his life loose; which made the Lord Chief Justice Hale detest him." Thinking that he might have a better chance in the Court of Common Pleas, where the men in business were very old and dull, he took the degree of the coif, and he was soon after made a King's Sergeant. Still, however, he kept company with Ken, Guy,[1] and the high-Court rakes, and his clients could not depend upon him. His visage being comely, and his speech witty and bold, he was a favorite with juries, and sometimes carried off wonderful verdicts; but, when he ought to have been consulting in his chamber in Sergeants' Inn, he was in a tavern or gaming-house, or worse place, near St. James's Palace.[2] Thus his gains were unsteady, and

June 25, 1669. He becomes a Sergeant. Nov. 21.

A.D. 1669–1676.

1. Henry Guy (1631–1710) was a politician. His first appointment about the Court was to the post of Cupbearer to the Queen, but he was soon admitted among the boon companions of Charles II. On the resignation in 1679 of Colonel Silas Titus, he became Groom of the Bedchamber, but sold his office by December of that year. In March, 1679, he was appointed Secretary to the Treasury, and the payments from the public funds passed through his hands until Christmas, 1688.—*Stephen's National Biog.*

2. Some quarter of a mile to the westward of Charing Cross, there stood in very early times a hospital for leprous women; it was a religious foundation, and was dedicated to St. James the Less, Bishop of Jerusalem. Henry VIII. set his covetous eyes upon the place, and pulled down the old structure, and erected a stately mansion. "St. James's Manor House," as it was long called, has ever since been part and parcel of the palatial establishment of the kings of England. But it was not until the burning of Whitehall in the reign of William III. that it became the royal resi-

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the fees which he received were speedily spent in dissipation, so that he fell into a state of great pecuniary embarrassment. On one occasion, he was arrested by a creditor in Westminster Hall as he was about to enter his coach. The process being out of the King's Bench, he complained to that Court of a breach of his privileges as a Sergeant; but Lord Chief Justice Hale refused to discharge him. He afterwards pleaded his privilege, and brought an action for what he called the illegal arrest, contending that, as a Sergeant-at-law, he could only be regularly sued in the Court of Common Pleas. The Judges decided unanimously against him, Hale observing, "Although Sergeants have a monopoly of practice in the Common Pleas, they have a right to practise, and do often practise, at this bar; and if we were to assign one of them as counsel, and he were to refuse to act, we should make bold to commit him to prison."[1]

He is arrested for debt.

Meanwhile, Sergeant Scroggs[2] was in high favor

dence—the scene of levees and drawing-rooms—the recognized seat of royalty. William resided mostly at Hampton Court, though he occasionally held councils at St. James's, and it was regarded as his town house. But Anne constantly resided there when in town; Caroline, Queen of George II., died there; George IV. was born there. "The Court," technically speaking, was held at St. James's during the whole reign of George III. (it still continues to be held there), but the domestic town residence of that monarch was Buckingham House. St. James's is now merely the pavilion containing the apartments used on occasions of state solemnity.—*Knight's London*, vol. ii. p. 369.

1. Freeman, 389; 2 Lev. 129; 3 Keb. 424, 439, 440; Roger North's Lives of the Norths, i. 137.

2. Lord Danby was his principal patron, and to his influence Scroggs entirely owed his next advances, as he had no reputation in his profession. On October 23, 1676, a seat on the bench of the Common Pleas was given to him, and nineteen months afterwards Sir Richard Raynsford was discharged to make way for him as Lord Chief Justice of the King's Bench, to which he was appointed on May 31, 1678. The Reports are so silent as to his previous professional career that the three years during which he presided in this court may be almost said to contain the whole history of his legal life. It presents such a combination of ignorance, arrogance, and brutality as fully to justify the censure almost universally pronounced upon the judicial appointments of the latter part of this reign.—*Foss's Lives of the Judges.*

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with Lord Shaftesbury's enemies, who, on the commitment of that turbulent leader to the Tower for breach of privilege, had gained a temporary advantage over him. Through the agency of Chiffinch,[1] superintendent of the secret intrigues of every description which were carried on at Whitehall, he had been introduced to Charles II., and the merry monarch took pleasure in his licentious conversation. What was of more importance to his advancement, he was recommended to the Earl of Danby, the reigning Prime Minister, as a man that might be useful to the Government if he were made a judge. In consequence, on the 23d of October, 1676, he was knighted, and sworn in a Justice of the Court of Common Pleas. Sir Allan Broderick, in a letter to "the Honorable Lawrence Hyde," written a few days after, says, "Sir William Scroggs, on Monday, being admitted Judge, made so excellent a speech that my Lord Northampton, then present, went from Westminster to Whitehall immediately, and told the King he had, since his happy restoration, caused many hundred sermons to be printed, all which together taught not the people half so much loyalty; therefore, as a sermon, desired his command to have it printed and published in all the market towns in England."[2]

He is introduced to Charles II.

He is made a Puisne Judge of the Common Pleas. Oct. 23, 1676.

A.D. 1678. He undermines Lord Chief Justice Raynsford.

Mr. Justice Scroggs gave himself little trouble with law business that came before the Court; but, in addressing grand juries on the circuit, he was loud and eloquent against the proceedings of the "country

1. William Chiffinch (1602?–1688) was Closet-keeper to Charles II. His employment showed itself to be of a disreputable nature as time wore on, for he was a time-server and libertine, wasteful, unscrupulous, open to bribery and flattery, ingratiating himself into the confidence of courtiers and mistresses, delighting in intrigue of every kind except political plots; though even with these he sometimes meddled, but seldom skilfully. Above all predecessors, he carried the abuse of backstairs influence to scientific perfection.—*Rose's Biog. Dict.*

2. Correspondence of the Earls of Clarendon and Rochester, vol. i. p. 2.

party," and he still continued to be frequently in the circle at Whitehall, where he took opportunities not only to celebrate his own zeal, but to sneer at Sir John Raynsford, the Chief Justice of the King's Bench, whose place he was desirous to fill.[1] Chiffinch, and his other patrons of the backstairs, were in the habit of sounding his praise, and asserting that he was the only man who, as head of the King's Bench, could effectually cope with the manœuvres of Shaftesbury. This unconquerable intriguer, having been discharged from custody, was again plotting against the Government, was preparing to set up the legitimacy of Monmouth, and was asserting that the Duke of York should be set aside from the succession to the throne and prosecuted as a Popish recusant. There had been a reluctance to exercise the prerogative of cashiering judges, which had been dormant during the long reign of Elizabeth, and the abuse of which had caused such scandal in the reigns of James I. and Charles I. But these scruples being once overcome were wholly disregarded. From this time the system recommenced of clearing the bench for political reasons, and it was continued till, the vilest wretch the profession of the law could furnish being Chief Justice of England, his tenure of the office became in some degree independent.[2]

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Chiffinch's patronage.

Recommencement of clearing the bench for political reasons.

The immediate cause of Raynsford's removal was the desire of the Government to have a Chief Justice of the King's Bench on whose vigor and subserviency reliance could be placed, to counteract the apprehended machinations of Shaftesbury.

On the 31st of May, 1678, Sir William Scroggs was

1. In consequence of the intrigues of Puisne Judges desirous of becoming Chiefs in the reigns of Charles II. and James II., the rule was laid down at the Revolution that a Puisne Judge is only to attend one levee on his appointment, and is never again to appear at Court.

2. Sir Robert Wright, James II.'s last Chief Justice, who presided at the trial of the Seven Bishops.

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Scroggs is made Chief Justice of the King's Bench. May 31, 1678.

sworn into the office,[1] and he remained in it for a period of three years. How he conducted himself in civil suits is never once mentioned, for the attention of mankind was entirely absorbed by his scandalous misbehavior as a Criminal Judge. He is looked to with more loathing, if not with more indignation, than Jeffreys, for in his abominable cruelties he was the sordid tool of others, and in his subsequent career he had not the feeble excuse of gratifying his own passions or advancing his own interests.

The part taken by him respecting the Popish Plot.

Although quite indifferent with regard to religion, and ready to have declared himself a Papist, or a Puritan, or a Mahometan, according to the prompting of his superiors,—finding that the policy of the Government was to outbid Shaftesbury in zeal for Protestantism, he professed an implicit belief in all the wonders revealed by Titus Oates,[2] in the murder of Sir Edmundbury Godfrey[3] by Papists, and in the absolute necessity for cutting off without pity all those who

1. 1 Vent. 329; Sir Thomas Raynard, 244.

2. Titus Oates, an infamous character, born about 1619. He was the son of a Baptist preacher, and received his education at Merchant Taylors' School, whence he removed to Cambridge, and afterwards took orders. In 1677 he pretended to turn Catholic, but on his return to England he declared himself a Protestant, and, in conjunction with one Dr. Ezrael Tongue, gave information of a pretended Popish Plot; which met with too ready a belief, and many innocent persons were executed. Oates was rewarded with a pension of 1,200*l.* a year; but when James II. came to the throne he was found guilty of perjury, pilloried, whipped, and ordered to be imprisoned for life. In the reign of William III. he obtained his liberty and a pension of 400*l.* a year. Died July 23, 1705.—*Cooper's Biog. Dict.*

3. Sir Edmundbury Godfrey was the justice of the peace to whom Oates gave formal information of the Popish Plot. Not very long afterwards, there was found in a ditch the dead body of Godfrey with his own sword thrust into it, and some marks of strangulation about the neck. A cry was immediately raised by Oates and Bedloe that the Papists had atrociously murdered him because he was a Protestant, and because he had received Oates's deposition. The mystery of his death remains unsolved. The most probable theory is that Oates and his desperate associates caused Godfrey to be murdered to give color to their false allegations, and to excite popular opinion in favor of their agitation.—*Pike's History of Crime in Eng.*, vol. ii. p. 224.

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were engaged in the nefarious design to assassinate the King, to burn London, and to extinguish the flames with the blood of Protestants. He thought himself to be in the singularly felicitous situation of pleasing the Government while he received shouts of applause from the mob. Burnet, speaking of his appointment, says, "It was a melancholy thing to see so bad, so ignorant, and so poor a man raised up to that great post. Yet he, now seeing how the stream ran, went into it with so much zeal and heartiness that he was become the favorite of the people."[1]

Nov. 20.

The first of the Popish Plot judicial murders—which are more disgraceful to England than the massacre of St. Bartholomew's is to France—was that of *Stayly*, the Roman Catholic banker. Being tried at the bar of the Court of King's Bench, Scroggs, according to the old fashion, which had gone out during the Commonwealth, repeatedly put questions to the prisoner, attempting to intimidate him, or to involve him in contradictions, or to elicit from him some indiscreet admission of facts. A witness having stated that "he had often heard the prisoner say he would lose his blood for the King, and speak as loyally as man could speak," Scroggs exclaimed, "*That is, when he spoke to a Protestant!*" In summing up, having run himself out of breath by the violence with which he declaimed against the Pope and the Jesuits, he thus apologized to the jury:

Murder of Stayly, the Roman Catholic banker.

"Excuse me, gentlemen, if I am a little warm, when perils are so many, murders so secret, that we cannot discover the murderer of that gentleman whom we all knew so well.[2] When things are transacted so closely, and our King is in great danger,

Scroggs's summing-up.

1. Own Times, ii. 69. He thus introduces our hero: "The Lord Chief Justice at that time was Sir William Scroggs, a man more valued for a good readiness in speaking well than either for learning in his profession or for any moral virtue. His life had been indecently scandalous, and his fortunes were very low."

2. Sir E. Godfrey.

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and religion is at stake, I may be excused for being a little warm. You may think it better, gentlemen, to be warm here than in Smithfield. Discharge your consciences as you ought to do. If guilty, let the prisoner take the reward of his crime, for perchance it may be a terror to the rest. I hope I shall never go to that heaven where men are made saints for killing kings."

The verdict of *guilty* being recorded, *Scroggs, C. J.*, said, "Now, you may die a Roman Catholic; and, when you come to die, I doubt you will be found a priest too. The matter, manner, and all the circumstances of the case make it plain; you may harden your heart as much as you will and lift up your eyes, but you seem, instead of being sorrowful, to be obstinate. Between God and your conscience be it; I have nothing to do with that; my duty is only to pronounce judgment upon you according to law—you shall be drawn to the place of execution, where you shall be hanged by the neck, cut down alive," etc., etc.

Stayly's body subjected to indignities.

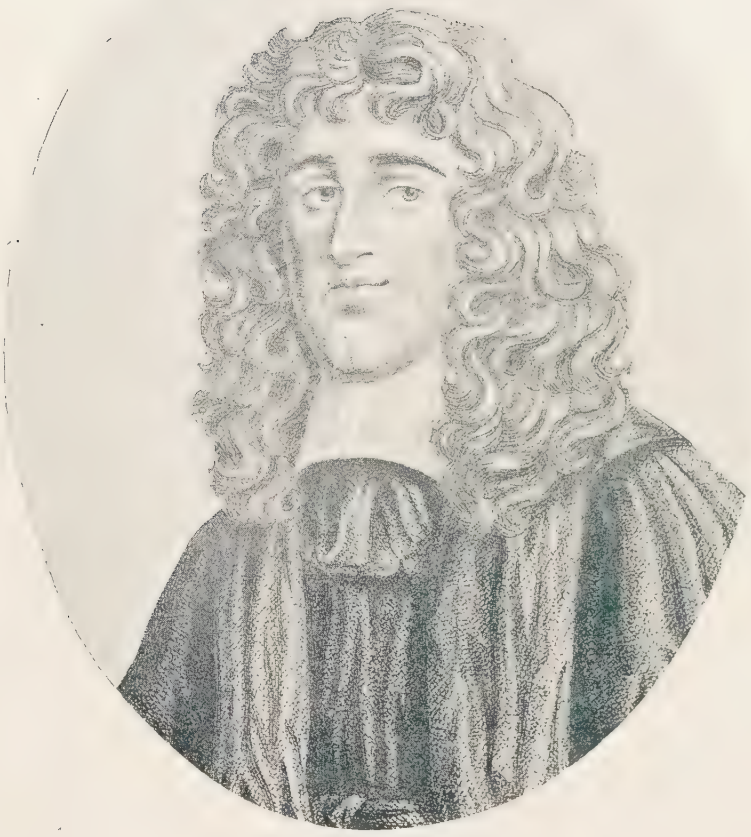
The unhappy convict's friends were allowed to give him decent burial; but, because they said a mass for his soul, his body was, by order of Lord Chief Justice Scroggs, taken out of the grave, his quarters were fixed upon the gates of the City, and his head, at the top of a pole, was set on London Bridge. So proud was Scroggs of this exploit, that he had an account of it written, for which he granted an IMPRIMATUR,[1] signed with his own name.[2]

A.D. 1679. Other murders committed by Scroggs.

I must not run the risk of disgusting my readers by a detailed account of Scroggs's enormities on the trials of Coleman, Ireland, Whitebread, Langhorn, and the other victims whom he sacrificed to the popular fury under pretence that they were implicated in the Popish Plot. Whether sitting in his own court at Westminster, or at the Old Bailey in the City of London, as long as he believed that Government favored the prosecutions, by a display of all the unworthy arts

1. "Let it be printed"—a license to print a book.

2. 6 St. Tr. 1501–1512. For this he probably received a good sum of money.



TITUS OATES.

of cajoling and intimidation he secured convictions. A modern historian, himself a Roman Catholic priest, says, with temper and discrimination, "The Chief Justice Scroggs, a lawyer of profligate habits and inferior acquirements, acted the part of prosecutor rather than of judge. To the informers he behaved with kindness, even with deference, suggesting to them explanations, excusing their contradictions, and repelling the imputation on their characters; but the prisoners were repeatedly interrupted and insulted; their witnesses were browbeaten from the bench, and their condemnation was generally hailed with acclamations, which the Court rather encouraged than repressed."[1]

Trial of a Popish priest.

Meanwhile the Chief Justice went the circuit; and although the Popish Plot did not extend into the provinces, it may be curious to see how he demeaned himself there. Andrew Bromwich being tried before him capitally, for having administered the sacrament of the Lord's Supper according to the rites of the Church of Rome, thus the dialogue between them proceeded:

Dialogue between Scroggs and the prisoner.

Prisoner: "I desire your Lordship will take notice of one thing, that I have taken the oaths of allegiance and supremacy, and have not refused any thing which might testify my loyalty." *Scroggs, C. J.:* "That will not serve your turn; you priests have many tricks. What is that to giving a woman the sacrament several times?" *Prisoner:* "My Lord, it was no sacrament unless I be a priest, of which there is no proof." *Scroggs:* "What! you expect we should prove you a priest by witnesses, who saw you ordained? We know too much of your religion; no one gives the sacrament in a wafer, except he be a Popish priest: you gave that woman the sacrament in a wafer; *ergo*, you are a Popish priest." Thus he summed up: "Gentlemen of the Jury, I leave it upon your consciences whether you will let priests escape, who are the very pests of Church and State; you had better be rid of one priest than three felons; so, gentlemen, I leave it to you."

1. Lingard, xii. 161. See 7 St. Tr. 1–591.

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The verdict and sentence.

After a verdict of GUILTY, the Chief Justice said, "Gentlemen, you have found a good verdict, and if I had been one of you I should have found the same myself." He then pronounced sentence of death, describing what seemed to be his own notion of the Divine Being, while he imputed this blasphemy to the prisoner,—"You act as if God Almighty were some omnipotent mischief, that delighted and would be served with the sacrifice of human blood."[1]

A.D. 1679, 1680.

Scroggs was more and more eager, and "ranted on that side more impetuously,"[2] when he observed that Lord Shaftesbury, who, although himself too shrewd to believe in the Popish Plot, had been working it furiously for his own purposes, was taken into office on the formation of Sir William Temple's[3] new scheme of administration, and was actually made President of the Council. But he began to entertain a suspicion that the King had been acting a part against his inclination and his judgment, and, having ascertained the real truth upon this point, he showed himself equally versatile and violent by suddenly going over to the opposite faction. Roger North gives the following racy account of his conversion:

1. 7 St. Tr. 715–730.

2. Roger North.

3. On the impeachment of Danby in 1679, and his commitment to the Tower, Charles II. looked to Temple as the only man who could help him to weather the storm caused by the Popish Plot. Temple's proposal was that a means should be adopted for including all parties in the government, and for this purpose proposed that the existing Privy Council should be dissolved, and that a new Privy Council of thirty members should be appointed, half of them to be great officers of state, and the other half independent noblemen and gentlemen of the greatest weight in the country; that the King should pledge himself to govern by the constant advice of this body, to suffer all his affairs of every kind to be freely dilated there, and not to reserve any part of the public business for a secret committee. An attempt was made to carry out this scheme, but it was soon found to be unworkable. The Council was too large for practical purposes, and there was no party tie to bind the members tog ther.—*Low and Pulling's Dict. of Eng. Hist.*

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Scroggs changes sides.

"It fell out that when the Earl of Shaftesbury had sat some short time in the Council, and seemed to rule the roast, yet Scroggs had some qualms in his politic conscience; and coming from Windsor in the Lord Chief Justice North's coach, he took the opportunity and desired his Lordship to tell him seriously if my Lord Shaftesbury had really so great power with the King as he was thought to have. His Lordship answered quick, 'No, my Lord, no more than your footman hath with you.' Upon that the other hung his head, and, considering the matter, said nothing for a good while, and then passed to other discourse. After that time he turned as fierce against Oates and his plot as ever before he had ranted for it."[1]

A.D. 1680. He procures the acquittal of Sir George Wakeman.

The first Popish Plot case which came on after this conversion was the trial of Sir George Wakeman, the Queen's physician, against whom Oates and Bedloe[2] swore as stoutly as ever; making out a case which implicated, to a certain degree, the Queen herself. But Chief Justice Scroggs now sneered at the marvellous memory or imagination of Oates; and, taking very little notice, in his summing up, of the evidence of Bedloe, thus concluded:

"If you are unsatisfied upon these things put together, and, well weighing, you think the witnesses have not said true, you will do well to acquit." *Bedloe:* "My Lord, my evidence is not right summed up." *Scroggs, C. J.:* "I know not by what authority this man speaks. Gentlemen, consider of your verdict."

Attacks on Chief Justice Scroggs.

An acquittal taking place, not only were Oates and Bedloe in a furious rage, but the mob were greatly disappointed, for their belief in the plot was still un-

1. Life of Guilford, i. 297.

2. William Bedloe, who assumed the title of Captain, was an infamous adventurer of low birth, who had travelled over a great part of Europe under different names and disguises, and had passed himself off with several ignorant persons as a man of rank and fortune. Encouraged by the success of Titus Oates, he turned King's evidence, gave an account of the murder of Sir Edmundbury Godfrey, and added many circumstances to the narrative of the former. A reward of 500*l.* was voted to Bedloe by the House of Commons. Died Aug. 20, 1680.—*Cooper's Biog. Dict.*

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shaken, and Scroggs, who had been their idol a few hours ago,[1] was in danger of being torn in pieces by them. Although he contrived to escape in safety to his house, he was assailed next morning by broadsides, ballads sung in the streets, and libels in every imaginable shape.

On the first day of the following term, he bound over in open court the authors, printers, and singers of some of the worst of them, and made the following speech:

Eloquent speech by him in his own vindication.

"I would have all men know, that I am not so revengeful in my nature, nor so nettled with this aspersion, that I could not have passed by this and more; but the many scandalous libels that are abroad, and reflect on public justice as well as upon my private self, make it the duty of my place to defend one, and the duty I owe to my reputation to vindicate the other. This is the properest occasion for both. If once our courts of justice come to be awed or swayed by vulgar noise, it is falsely said that men are tried for their lives or fortunes; they live by chance, and enjoy what they have as the wind blows, and with the same certainty. Such a base fearful compliance made Felix, willing to please the people, leave Paul bound. The people ought to be pleased with public justice, and not justice seek to please the people. Justice should flow like a mighty stream; and if the rabble, like an unruly wind, blow against it, the stream they made rough will keep its course. I do not think that we yet live in so corrupt an age that a man may not with safety be just, and follow his conscience; if it be otherwise, we must hazard our safety to preserve our integrity. As to Sir George Wakeman's trial, I am neither afraid nor ashamed to mention it. I will appeal to all sober and understanding men, and to the long robe more especially, who are the best and properest judges in such cases, for the fairness and equality of my carriage on that occasion. For those hireling scribblers who traduce me, who write to eat and lie for bread, I intend to meet with them another way, for, like vermin, they are only safe while they are secret. And let those vipers, those printers and booksellers by whom

1. "By his zeal in the Protestant cause he gained for a while an universal applause throughout the whole nation."—*Athenæ*, iv. 116.

WILLIAM BEDLOE.

CHAP. XIX. Eloquent speech by him in his own vindication, continued.

they vend their false and braided ware, look to it; they shall know that the law wants not power to punish a libellous and licentious press, nor I resolution to put the law in force. And this is all the answer fit to be given (besides a whip) to those hackney writers and dull observators that go as they are hired or spurred, and perform as they are fed. If there be any sober and good men that are misled by false reports, or by subtlety deceived into any misapprehensions concerning that trial or myself, I should account it the highest pride and the most scornful thing in the world if I did not endeavor to undeceive them. To such men, therefore, I do solemnly declare in the seat of justice, where I would no more lie or equivocate than I would to God at the holy altar, I followed my conscience according to the best of my understanding in all that trial, without fear, favor, or reward, *without the gift of one shilling, or the value of it directly or indirectly, and without any promise or expectation whatsoever.*[1] Do any think it an even wager, whether I am the greatest villain in the world or not—one that would sell the life of the King, my religion, and country, to Papists for money? He that says great places have great temptations, has a little if not a false heart himself. Let us pursue the discovery of the plot in God's name, and not balk anything where there is suspicion on reasonable grounds; but do not pretend to find what is not, nor count him a turncoat that will not betray his conscience nor believe incredible things. Those are foolish men who think that an acquittal must be wrong, and that there can be no justice without an execution."[2]

Many were bound over; but I do not discover more than one prosecution brought to trial,—that against Richard Radly, who was convicted of speaking scandalous words of the Lord Chief Justice Scroggs, and fined 200*l.* May 29, 1680.

When the Earl of Castlemaine[3]—the complaisant

1. From this asseveration a suspicion arises of pecuniary corruption, but I believe that Scroggs was swayed in this instance by a disinterested love of rascality.

2. 7 St. Tr. 687–706.

3. Roger Palmer, Earl of Castlemain, was son of Sir James Palmer, of Dorney, Buckinghamshire, and was created Earl of Castlemain by Charles II. He was very zealous in promoting the Catholic interest,

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Acquittal of the Earl of Castlemaine.

husband of the King's mistress—was brought to trial for being concerned in the Plot, Scroggs was eager to get him off, still despising popular clamor. Bedloe being utterly ruined in reputation, Dangerfield[1] was now marched up, as the second witness, to support Oates. He had been sixteen times convicted of infamous offences; and, to render him competent, a pardon under the Great Seal was produced. But the Chief Justice was very severe upon him, saying, in summing up, to the jury, "Whether this man be of a sudden become a saint because he has become a witness, I leave that to you to consider. Now I must tell you, though they have produced two witnesses, if you believe but one, this is insufficient. In treason, there being two witnesses, the one believed, the other disbelieved, may there be a conviction? I say, no. Let us deal fairly and aboveboard, and so preserve men who are accused and not guilty." The defendant being acquitted, the Chief Justice was again condemned as a renegade.[2]

and this was the cause of his being prosecuted at the time of Oates's plot, when, however, he was acquitted. After James II. ascended the throne, Lord Castlemain was distinguished on several occasions, but principally by being sent on an embassy to Pope Innocent XI. An account of this embassy, illustrated with splendid engravings, was afterwards published in Italian and English by Michael Wright, painter, and major-domo to the Earl. After the Revolution his Lordship was confined in the Tower for some time. and on gaining his liberty he retired to the Continent for several years, but died in Wales, 1705.—*Cooper's Biog. Dict.*

1. Thomas Dangerfield (*d.* 1685), the inventor of the "Meal-tub Plot," was a man of profligate life, who had been more than once branded, whipped, and imprisoned for felony. His disclosures implicating the Presbyterian leaders were not believed, and his retractation and subsequent accusation of the Catholics led fortunately to no judicial murders, as in the case of his fellow-informers Oates and Bedloe. On the accession of James II. Dangerfield was convicted of libel in connection with the Meal-tub Plot, and was put in the pillory and whipped. On his way back to prison he was brutally assaulted by a Roman Catholic lawyer named Francis, and a few days afterwards died.—*Low and Pulling's Dict. of Eng. Hist.*

2. 7 St. Tr. 1067–1112.

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Acquittal of Mrs. Cellier.

He further made himself obnoxious to the charge of having gone over to the Papists, by his conduct on the trial of Mrs. Elizabeth Cellier,[1] who, if she had been prosecuted while he believed that the Government wished the Plot to be considered real, would unquestionably have been burnt alive for high treason, but now was the object of his especial protection and favor. The second witness against her was Dangerfield, who, when he was put into the box, before any evidence had been given to discredit him, was thus saluted by Chief Justice Scroggs:

Dialogue with Dangerfield.

"We will not hoodwink ourselves against such a fellow as this, that is guilty of such notorious crimes. A man of modesty, after he hath been in the pillory, would not look a man in the face. Such fellows as you are, sirrah, shall know we are not afraid of you. It is notorious enough what a fellow this is. I will shake all such fellows before I have done with them." *Dangerfield:* "My Lord, this is enough to discourage a man from ever entering into an honest principle." *Scroggs, C. J.:* "What? Do you, with all mischief that hell hath in you, think to have it in a court of justice? I wonder at your impudence, that you dare look a court of justice in the face, after having been made appear so notorious a villain. Come, gentlemen of the jury, this is a plain case; here is but one witness in a case of treason; therefore lay your heads together, and say *not guilty.*"

Mrs. Cellier was set at liberty, and Dangerfield was committed to occupy her cell in Newgate.[2]

1. The Meal-tub Plot (1679) was a pretended conspiracy fabricated by the informer Dangerfield, who hoped thereby to emulate Oates and Bedloe. He declared that the Presbyterians were conspiring to raise an army and establish a republic. At first he was believed, but his imposture being discovered, he was committed to Newgate, when he suddenly turned round and declared that the pretended conspiracy was an imposture concocted by the Papists to hide a real Popish Plot, which had for its object the murder of the King. The papers relating to this plot were, he declared, concealed in a *Meal-tub* in the house of Mrs. Cellier, a Roman Catholic lady, who was tried with Lady Powys for the alleged plot, but acquitted.—*Low and Pulling's Dict. of Eng. Hist.*

2. 7 St. Tr. 1013–1055.

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Chief Baron Atkyns is superseded for opposing Scroggs's slavish doctrines.

When holding assizes in the country, he took every opportunity of proclaiming his slavish doctrines. Going the Oxford Circuit with Lord Chief Baron Atkyns,[1] he told the grand jury that a petition from the Lord Mayor and citizens of London to the King, for calling a parliament, was high treason. Atkyns, on the contrary, affirmed "that the people might petition the King, and, so that it was done without tumult, it was lawful." Scroggs, having peremptorily denied this, went on to say that "the King might prevent printing and publishing whatever he chose by proclamation." Atkyns mildly remarked, "that such matters were fitter for parliament, and that, if the King could do this work of parliament, we were never like to have parliaments any more." Scroggs, highly indignant, sent off a despatch to the King, stating the unconstitutional and treasonable language of Chief Baron Atkyns. This virtuous Judge was in consequence superseded, and remained in a private station till he was reinstated in his office after the Revolution.[2]

Ingenious scheme to extinguish the liberty of the press.

Before Scroggs was himself prosecuted and dismissed from his office with disgrace, he swelled the number of his delinquencies by an attack on the liberty of the press, which was more violent than any that had ever been attempted by the Star Chamber, and which, if it had been acquiesced in, would have effectually established despotism in the country. Here he was directly prompted by the Government, and it is surprising that this proceeding should so little have

1. Sir Robert Atkyns, an eminent English lawyer and judge, a son of Edward Atkyns, who was a Baron of the Exchequer, was born in Gloucestershire in 1621. He was knighted at the coronation of Charles II., and appointed a Judge of the Court of Common Pleas in 1672. Refusing to be subservient to the designs of the corrupt Court, he resigned or was removed in 1680. After the Revolution which dethroned James II. he was appointed Chief Baron of the Exchequer in 1689. Died in 1709.—*Thomas' Biog. Dict.*

2. 5 Parl. Hist. 309.

attracted the notice of historians who have dwelt upon the arbitrary measures of the reign of Charles II. The object was to put down all free discussion, and all complaints against misrule, by having, in addition to a licenser, a process of *injunction* against printing,—to be summarily enforced, without the intervention of a jury, by fine, imprisonment, pillory, and whipping. There was then in extensive circulation a newspaper called "The Weekly Pacquet of Advice from Rome, or the History of Popery," which reflected severely upon the religion now openly professed by the Duke of York and secretly embraced by the King himself. In Trinity Term, 1680, an application being made to the Court of King's Bench on the ground that this newspaper was libellous, Scroggs, with the assent of his brother Judges, granted a rule absolute in the first instance, forbidding the publication of it in future.[1] The editor and printer being served with the rule, the journal was suppressed till the matter was taken up in the House of Commons, and Scroggs was impeached.

"The Weekly Pacquet of Advice from Rome."

The same term, he gave the crowning proof of his servility and contempt of law and of decency. Shaftesbury, to pave the way for the Exclusion Bill,[2] resolved to prosecute the Duke of York as a "Popish recusant." The heir presumptive to the throne was clearly liable to this proceeding and to all the penalties, forfeitures,

Scroggs frustrates the attempt to indict the Duke of York as a Popish recusant by discharging the grand jury.

1. "Die Mercurii proxima post tres septimanas Sanctæ Trinitatis Anno 32 Car. II. Regis, Ordinatum est quod Liber intitulat, *The Weekly Pacquet of Advice from Rome, or the History of Popery*, non ulterius imprimatur vel publicetur per aliquam personam quamcunque. *Per* CUR." ["On the Wednesday following the three weeks of Holy Trinity, in the 32d year of the reign of Charles II., it was ordered that a Book bearing the title, 'The Weekly Pacquet of Advice from Rome, or the History of Popery,' should not be published by any person whomsoever."]—8 *St. Tr.* 198.

2. The Exclusion Bill was first brought into the House of Commons in 1679. It proposed that the crown should descend to the heirs of the Duke of York, on Charles's demise, in the same manner as if the Duke were himself dead.

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and disqualifications which it threatened, for he had been educated a Protestant, and, having lately returned from torturing the Covenanters in Scotland, he was in the habit of ostentatiously celebrating the rites of the Romish religion in his chapel in London. An indictment against him was prepared in due form, and this was laid before the grand jury for the county of Middlesex by Lord Shaftesbury, along with Lord Russell,[1] Lord Cavendish, Lord Grey de Werke, and other members of the country party. This alarming news being brought to Scroggs while sitting on the bench, he instantly ordered the grand jury to attend in court. The bailiff found them examining the first witness in support of the indictment; but they obeyed orders. As soon as they had entered the court, the Chief Justice said to them, "Gentlemen of the grand jury, you are discharged, and the country is much obliged to you for your services."

June 16.

It would have been consolatory to us, in reading an account of the base actions of Scroggs, if we could have looked forward to his suffering on a scaffold like Tresilian, or dying ignominiously in the Tower of London like Jeffreys. He escaped the full measure of retribution which he deserved, but he did not go unpunished.

Charges against Scroggs before the King in Council.

There were two classes whom he had offended, of very different character and power,—the witnesses in support of the Popish Plot, and the Exclusionist

1. William Lord Russell (1630–1683) appears as one of the chiefs of the Opposition towards the close of the Long Parliament of Charles II. In 1683 Russell was accused of participation in the Rye House Plot (a plot to murder the King and the Duke of York), though it is almost certain that Russell and his friends had merely discussed the possibility of a popular agitation for a new Parliament, and did not contemplate the employment of force. He was tried for high treason at the Old Bailey on July 13, 1683, declared guilty, and executed on the 21st, refusing to the last, in spite of the arguments of Tillotson and Burnet, to assent to the doctrine of non-resistance.—*Appl. Encyc. of Biog.*

leaders. The first began by preferring Articles against him to the King in Council, which alleged, among other things, that at the trial of Sir George Wakeman "he did browbeat and curb Dr. Titus Oates and Captain Bedloe, two of the principal witnesses for the King, and encourage the jury impanelled to try the malefactors to disbelieve the said witnesses, by speaking of them slightingly and abusively, and by omitting material parts of their evidence: That the said Chief Justice, to manifest his slighting opinion of the evidence of the said Dr. Titus Oates and Captain Bedloe in the presence of his most sacred Majesty and the Lords of his Majesty's most honorable Privy Council, did dare to say that Dr. Titus Oates and Captain Bedloe always had an accusation ready against any body: That the said Lord Chief Justice is very much addicted to swearing and cursing in his common discourse, and to drink to excess, to the great disparagement of the dignity and gravity of his office."

Reason why these charges were entertained.

It seems surprising that such charges from such a quarter, against so high a magistrate, should have been entertained, although he held his office during the pleasure of the Crown. The probability is that, being in favor with the Government, it was considered to be the most dexterous course to give him the opportunity of being tried before a tribunal by which he was sure of being acquitted, in the hope that his acquittal would save him from the fangs of an enraged House of Commons.

He was required to put in an answer to the Articles, and a day was appointed for hearing the case. When it came on, to give greater *éclat* to the certain triumph of the accused, the King presided in person. Oates and Bedloe were heard, but they and their witnesses were constantly interrupted and stopped, on the ground that they were stating what was not evidence,

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or what was irrelevant; and, after a very eloquent and witty speech from the Chief Justice, in the course of which he caused much merriment by comments on his supposed immoralities, judgment was given that the complaints against him were false and frivolous.

Scroggs is acquitted.

But Shaftesbury was not so easily to be diverted from his revenge. On the meeting of parliament, he caused a motion to be made in the House of Commons for an inquiry into the conduct of Lord Chief Justice Scroggs in discharging the Middlesex grand jury and in other matters. A committee was accordingly appointed, which presented a report recommending that he should be impeached. The report was adopted by a large majority, and Articles of Impeachment were voted against him. These were *eight* in number. The *first* charged in general terms "that the said William Scroggs, Chief Justice of the King's Bench, had traitorously and wickedly endeavored to subvert the fundamental laws and the established religion and government of the kingdom of England." The *second* was for illegally discharging the grand jury, "whereby the course of justice was stopped maliciously and designedly,—the presentments of many Papists and other offenders were obstructed,—and in particular a bill of indictment against James Duke of York, which was then before them, was prevented from being proceeded upon." The *third* was founded on the illegal order for suppressing the Weekly Pacquet newspaper. The three following articles were for granting general warrants, for imposing arbitrary fines, and for illegally refusing bail. The *seventh* charged him with defaming and scandalizing the witnesses who proved the Popish Plot. The *last* was in these words: "VIII. Whereas the said Sir William Scroggs, being advanced to be Chief Justice of the Court of King's Bench, ought, by a sober, grave, and virtuous conversation, to

Nov. 23. Proceedings against him in the House of Commons.

Dec. 23.

The eight Articles of Impeachment.

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have given a good example to the King's liege people, and to demean himself answerable to the dignity of so eminent a station; yet, on the contrary thereof, he doth, by his frequent and notorious excesses and debaucheries, and his profane and atheistical discourses, daily affront Almighty God, dishonor his Majesty, give countenance and encouragement to all manner of vice and wickedness, and bring the highest scandal on the public justice of the kingdom."

Jan. 7, 1681. The articles carried up to the Lords.

These articles were carried to the House of Peers by Lord Cavendish, who there, in the name of all the Commons of England, impeached Chief Justice Scroggs for "high treason, and other high crimes and misdemeanors."

The articles being read, the accused, who was present, sitting on the Judge's woolsack, was ordered to withdraw. A motion was then made that he be *committed;* but the previous question was moved and carried, and a motion for an address to suspend him from his office till his trial should be over was got rid of in the same manner. He was then called in, and ordered to find bail in 10,000*l.*, to answer the articles of impeachment, and to prepare for his trial.

He is saved by the sudden dissolution of parliament.

Luckily for him, at the end of three days the parliament was abruptly dissolved. It would have been difficult to make out that any of the charges amounted to *high treason;* but in those days men were not at all nice about such distinctions, and a dangerous but convenient doctrine prevailed, that, upon an impeachment, the two Houses of Parliament might retrospectively declare anything to be treason, according to their discretion, and punish it capitally. At any rate, considering that the influence of Shaftesbury in the Upper House was so great, and that Halifax[1] and the

1. George Savile or Saville, Marquis of Halifax, an English statesman, born in 1630, was the son of Sir William Savile, of Yorkshire, and grand-

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respectable anti-exclusionists could not have defended or palliated the infamous conduct of Scroggs, had his case come to a hearing, he could not have got off without some very severe and degrading punishment.

Reasons for cashiering him.

Although he escaped a judicial sentence, his character was so blown upon, and juries regarded him with such horror and were so much inclined to go against his direction, that the Government found that he would obstruct instead of facilitating their designs against the Whig leaders, and that it was necessary to get rid of him. After the dissolution of the Oxford parliament the Court was completely triumphant, and, being possessed for a time of absolute power, had only to consider the most expedient means of perpetuating despotism, and wreaking vengeance on the friends of freedom. Before long, Russell, Sidney,[1] and Shaftesbury were to be brought to trial, that their heads

father of Lord Chesterfield. In 1668 his loyalty to the Stuart family was rewarded by a peerage, with the title of Viscount Halifax. In the reign of Charles II. he was the rival of Shaftesbury. He was a man of eminent abilities and accomplishments, and acquired great influence in Parliament by his readiness in debate, his copious eloquence, and his extensive knowledge. In 1679 he was appointed member of the Council of Thirty, and in 1682 was made a marquis. He opposed the bill for the exclusion of the Duke of York from the throne, and was Speaker of the Lords in the Convention or Parliament which settled the succession in the Revolution of 1688. At the accession of William III. Halifax was appointed Lord Privy Seal, but resigned that office in 1690, and joined the Opposition. He was called "the trimmer of trimmers" in politics, and censured for inconstancy. Macaulay, however, represents him as "the most accomplished, the most enlightened, and, in spite of great faults, the most estimable" of the statesmen who were formed in the corrupt Court of Charles II. He wrote two political tracts,—"The Character of a Trimmer" and "Anatomy of an Equivalent,"—which entitle him to a place among English classical authors. He left an only son, at whose death, about 1700, the title became extinct. Died in 1695.—*Thomas' Biog. Dict.*

1. Algernon Sidney, an English statesman, born about 1622, executed on Tower Hill, London, December 7, 1683. He was the second surviving son of the second Earl of Leicester of that creation, by the eldest daughter of the Earl of Northumberland, and grandnephew of Sir Philip Sidney. In 1646 Sidney was appointed Lieutenant-General of Horse in Ireland, and Governor of Dublin. In the same year he entered Parliament for Cardiff, and in May, 1647, received the thanks of Parliament for his services in Ireland, and was made Governor of Dover Castle. He acted

ALGERNON SIDNEY

might pay the penalty of the Exclusion Bill; but if Scroggs should be their judge, any jury, whether inclined to Protestantism or to Popery, would probably acquit them. CHAP. XIX.

Accordingly, in the beginning of April, to make room for one who, it was hoped, would have more influence with juries, and make the proceedings meditated against the City of London and other corporations pass off with less discredit, while he might be equally subservient, Sir William Scroggs was removed from his office of Chief Justice of the King's Bench. So low had he fallen, that little regard was paid to his feelings, even by those for whom he had sacrificed his character and his peace of mind; and, instead of a "resignation on account of declining health," it was abruptly announced to him that a *supersedeas* had issued, and that SIR FRANCIS PEMBERTON, who had been a puisne judge under him, was to succeed him as Chief Justice. He is cashiered. April, 1681.

His disgrace caused general joy in Westminster Hall, and over all England; for, as Jeffreys had not yet been clothed in ermine, the name of Scroggs was the byword to express all that could be considered loathsome and odious in a judge. His disgrace causes general joy.

He was allowed a small pension, or retired allowance, which he did not long enjoy. When cashiered,

as one of the judges of the King, but refrained from signing the warrant for his execution, although he subsequently characterized it as "the justest and bravest action that ever was done in England or anywhere else." Intent upon establishing an English republic, in 1665 he sought the assistance of the Dutch Government and the influence of the French ministers towards that end. Failing in both instances, he retired to the south of France, where he lived till 1677. On the discovery of the Rye House Plot in June, 1683, Sidney, with his illustrious companion in misfortune, William Lord Russell, was arrested on a charge of complicity with the conspirators, and imprisoned in the Tower. Garbled extracts from a theoretical work on government, in manuscript, which had been found among Sidney's papers, were read in evidence against him, and were deemed sufficient to convict. Sidney met his death "with the fortitude of a Stoic."—*Appl. Encyc.*, vol. xv. p. 23.

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He retires into the country.

finding no sympathy from his own profession, or from any class of the community, he retired to a country house which he had purchased, called Weald Hall, near Brentwood, in Essex. Even here his evil fame caused him to be shunned. He was considered by the gentry to be without religion and without honor; while the peasantry, who had heard some vague rumors of his having put people to death, believed that he was a murderer, whispered stories of his having dealings with evil spirits, and took special care never to run the risk of meeting him after dark. His constitution was undermined by his dissolute habits; and, in old age, he was still a solitary selfish bachelor.

His death. Oct. 25, 1683.

After languishing, in great misery, till the 25th day of October, 1683, he then expired, without a relation or friend to close his eyes. He was buried in the parish church of South Weald; the undertaker, the sexton, and the parson of the parish, alone attending the funeral.

He leaves no descendants.

He left no descendants; and he must either have been the last of his race, or his collateral relations, ashamed of their connection with him, had changed their name,—for, since his death, there has been no Scroggs in Great Britain or Ireland. The word was long used by nurses to frighten children; and as long as our history is studied, or our language is spoken or read, it will call up the image of a base and bloody-minded villain.

His character.

With honorable principles, and steady application, he might have been respected in his lifetime, and left an historical reputation behind him. "He was a person of very excellent and nimble parts,"[1] and he could both speak and write our language better than any lawyer of the 17th century, Francis Bacon alone excepted. He seems to have been little aware of the light in which his judicial conduct would be viewed; for it is a curious fact that

1. Wood.

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the published Reports of the State Trials at which he presided were all revised and retouched by himself;[1] and his speeches, which fill us with amazement and horror, he expected would be regarded as proofs of his spirit and his genius. Thank Heaven, we have no such men in our generation: it is better for us to contemplate dull, moral mediocrity, than profligate eccentricity, however brilliant it may be.[2]

How he may have been of use to England.

Scroggs may be considered as having been of some use to his country, by making the character of a wicked judge so frightfully repulsive that he may have deterred many from giving way to his bad propensities. Dean Swift says, "I have read somewhere of an Eastern king who put a judge to death for an iniquitous sentence, and ordered his hide to be stuffed into a cushion, and placed upon the tribunal for the son to sit on, who was preferred to his father's office. I fancy such a memorial might not have been unuseful to a son of Sir William Scroggs; and that both he and his successors would often wriggle in their seats as long as the cushion lasted."[3]

1. One of the charges against him was, that he made a traffic in selling to booksellers the exclusive right of publishing trials before him. It was said he bargained to receive 150 guineas for the Report of Sir George Wakeman's trial, and 100 guineas more if it was not finished in one day.

2. See 8 St. Tr. 163–224.

3. Drapier's Letters, No. V. See 2 Shower, 155; 1 Ventris, 329, 354; Macph. State Papers, i. 106.

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